

Hindu Code Bill (Clause by Clause Discussion)

HINDU CODE—contd.

SECTION - A

Clause-by-Clause Discussion

* **Mr. Speaker:** The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee.

Shri R. K. Chaudhari (Assam): Sir, before the Hon. Law Minister proceeds with his Bill, may I make a most humble suggestion and it is this: either we finish the more important and shorter Bills in the agenda, and then take up the Hindu Code Bill and finish it, or let it be understood that the Hindu Code Bill will be considered from now and until the Hindu Code Bill is finished no other Bill will be taken up. Either of the two courses must be adopted. It seems that some people who are very much in favour of the Hindu Code Bill think that they are merely playing with time by taking up this Bill, considering it for a short period up to one stage, and then putting it off further for a longer spell of time. That is rather unfair to everybody concerned. Therefore, my first respectful request is this. Let us finish these shorter and more important Bills, as for instance, the Preventive Detention Bill. Under that Act, a number of persons who were arrested were released under the orders of the High Courts. They have again been re-arrested and the whole thing has been held up in expectation of a more comprehensive Bill which was promised by Government. I submit, Sir, that, in the interests of law and order and also in view of the fact that justice should be allowed to run undeterred, we must finish the most important legislation, namely, the Preventive Detention Bill first, then the Employers' Liability Bill, and then sit down on the Hindu Code and finish it altogether. I hope my suggestion would be acceptable to the Hon. Law Minister.

Mr. Speaker: Is this suggestion acceptable to the Hon. Minister?

The Minister of Law (Dr. Ambedkar): No. Sir.

Mr. Speaker: So, we will proceed with the further consideration of the Hindu Code Bill.

Shri Naziruddin Ahmad (West Bengal): Sir, I have a point of order. The Hindu Code Bill is before the House for a very long time.

Meanwhile, some important things have taken place, namely, that the Constitution has been passed and a large number of Acts and sections have been declared to be *ultra virus* of the Constitution. . The present Bill would seem to offend against certain definite provisions of the Constitution. We have enacted so many things in the Constitution that I was amazed to find that many relevant Acts are declared *ultra virus* There are two provisions in

the Constitution: One is that legislation should not be discriminatory. This is enacted in article 15; clause (1) of that article says:

" The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex"

I submit that the Bill is confined to Hindus. Within that expression ' Hindus ', large number of classes who would not be ordinarily Hindus are attempted to be brought. Even apart from that, there are large classes who will be outside this Bill. I submit that there is discrimination between different castes and persons following different religions. The words ' only of religion ' do not seem to make any difference. There is discrimination between different sections of our citizens on the ground of religion. The phrase ' only of religion ' does not mean much. For I find there is no other reason why there is difference between the different religious sects, except on grounds of religion. That is one thing.

The second article, which I would like to submit for the consideration of the house, is....

Shri Tyagi (Uttar Pradesh): May I point out. Sir that last time when we adjourned, it was decided and all agreed. —he was also a party—that no dilatory motions will be made.

Mr. Speaker : Order, order. He is not making any motion. He is only raising a point of order, according to him.

Shri Naziruddin Ahmad: I shall be very brief.

Sir. Shri B. Das (Orissa): But, he is making a long speech.

Shri Naziruddin Ahmad: The other article to which I would like to refer is 25(1). It says:

"Subject to public order, morality and health... " which do not mean....

Shrimati Durgabai (Madras) : In the name of raising a point of order, is the hon. Member allowed to argue the question on the merits of the case ?

Mr. Speaker: He is arguing and he is entitled to argue; let us not be impatient with the people who differ.

Shri Sonavane (Bombay): What is his point of order?

Mr. Speaker: The hon. Member should hear what he is saying.

Shri Sonavane: Is he allowed to argue it?

Mr. Speaker: I cannot stop a Member, unless I know what he is going to speak, and I cannot know that unless he speaks out. So in order to know what the hon. Member is going to say. I must hear him, and that is the only democratic way in which we can go on.

Shrimati Durgabai: But, will he be allowed to refer to certain clauses of the Bill?

Mr. Speaker: The hon. Member knows that every person who wishes to argue his case is at liberty to speak; of course, if I find an hon. Member is abusing the liberty or is repeating himself I shall certainly stop him.

Shri Raj Bahadur (Rajasthan): Sir, I would like to know by way of a ruling

from you whether the hon. Member can use such derogatory terms as he did, when referring to certain provisions of the Constitution. He said that " subject to public morality, health, etc. " are meaningless terms. Can he make such observations?

Shri R. K. Chaudhari: Sir, I submit that when a point of order is raised and when the Speaker is listening to that point of order, there should be no interruptions from any hon. Member. Mr. Speaker: Order, order.

Shri Naziruddin Ahmed: I submitted that the words in clause (1) of article 25—"Subject to public order, morality and health " do not really mean anything serious. I think they are the usual dreamy kind of safeguards, which have no legal significance. The article further says:

" ... all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. " With regard to the subject of marriage, it is considered by all devout Hindus that marriage is part of their religious profession and practice. So far as I know, a Hindu thinks of marriage as part of his religion, and if a man has no son, he, it is believed, goes to a particular region in hell.

Shri Tyagi: Order, order, I have no son.

Mr. Speaker: Will the hon. member resume his seat? Order, order. I want the hon. Member not to interrupt.

Shri Naziruddin Ahmad : In order to ensure against a particular kind of hell, the man should have a son, and in order to have that, he must marry. That is one of the ten *samskaras* of a Hindu. It is a religious practice, and in order to have son, a man can have one wife or more than one. Therefore. I submit that this provision curtails the Fundamental Right given in article 25(1). I am not raising a point which is only of academic interest, for this clause has been utilised by the Bombay High Court recently in declaring a certain Act—Prevention of Bigamous Marriages Act—to be *ultra virus*.

Dr. Amhedkar: By the Bombay High Court? I am sure that is not correct. It was probably some magistrate.

Shri Naziruddin Ahmad : The question before us is whether some of the provisions relating to marriage may not be *ultra virus* of the Constitution. There is also the ground of discrimination, in view of article 15(1) of the Constitution. There are numerous other articles detailing with minor aspects of the question, but I think, these two would suffice for the lime being. I am well aware of the principle that the Speaker cannot rule out a point because the legality of it is doubtful. But these are real stumbling blocks and I would request you. Sir, to consider the legality of the Bills. As we all know, a large number of Acts and sections have been declared *ultra virus*. Even at the lime the Constitution was passed, objections were raised that these might be declared *ultra virus*. We have enacted these Fundamental Rights and anything inconsistent with them; to the extent of that inconsistency, would he null and void. There is no way out of it. If there is any law, any Act, which is in

any way inconsistent with these articles, those laws or Acts. to the extent of that inconsistency, shall be void. That is the serious question before us now. Should we pass an enactment which would be declared *mill and void* ? Should we not reconsider the Bill in view of the structure of the Constitution which we have chosen to give to ourselves?

Sir, these are some of the matters which I venture to submit for your consideration.

Mr. Speaker: I do not think I need go in detail over the serious points raised by the hon. Member, Mr. Naziruddin Ahmad. The short answer, which I can give to whatever he has stated, is this. What he urges now may be true in respect of some of the provisions at the most, not all the provisions. And the proper procedure and lime to deal with them would be when the particular provision which he thinks contravenes the Constitution, comes up for consideration, not till then, because to say all the provisions are of that type, and therefore there should be no consideration of the Bill, would be going too far.

That is the short way in which I can dispose of all the objections which the hon. Member has urged. This does not mean that I agree with his view. But assuming that his view is correct, still the proper time would be when the relevant clause comes up for consideration. This House is perfectly competent to add to, or subtract from the Bill as presented to the House, if the House comes to the conclusion that a particular provision is not proper or offends against the Constitution. But it cannot be decided by the Chair just at the very beginning.

I do not think I need go into the merits of the arguments as to how far there is really any discrimination or how far marriage is really a question of religion and so on and so forth.

I think we shall now proceed with the bill, clause by clause.

Clause 2— (*Application of Code*)

Pandit M. B. Bhargava (Ajmer): I have got an amendment standing in my name, proposing the insertion of a new clause 2, after clause 1

Mr. Speaker: Yes, that is right. The hon. Member may move it now.

Shri Tyagi : Sir, before that, may I refer to a ruling you gave once, and to the ruling which you gave just now? Once when I raised a point about a Bill being declared *ultra virus*, the ruling was that it was for the Courts to decide whether it was *ultra virus* and that it was not within the purview of the Chair. Sir. do you hold to that view now or will you use discretion in declaring certain clauses *ultra virus* or otherwise of the Constitution ?

Mr. Speaker: I do not think I have yet any grounds for changing my view. If however, grounds are shown. I may reconsider the matter.

Pandit Thakur Das Bhargava (Punjab): Sir, ordinarily clause 1 is taken after all the clauses are finished. In regard to the Hindu Code I find from the amendments to clause 1 that some of them involve questions of a very

substantive nature. They relate to applicability of the Code in certain States. Many amendments to clause I have been put on the order paper and may I request you kindly to consider whether it would be possible to take up clause I first?

Mr. Speaker: The reason for taking up clause I at the end is to see that it may be properly worded, after seeing the final form of the various provisions in the legislation. The hon. Member will see that sub-clause (1) of clause I says as to what the name of the Bill shall be: sub-clause (2) deals with the territorial extent of this legislation and sub-clause (3) speaks about the date from which the Bill will come into force.

Pandit Thakur Das Bhargava: Territorial extent is a substantive question.

Mr. Speaker: Even in regard to that, after going through the provisions of the Bill it may be possible for us to see more clearly. As to whether the provisions of the Bill should apply to all parts of India or exceptions should be made in respect of certain provisions in respect to certain States or areas. To my mind, it appears more advantageous to take clause I at the end, for then the House will have a more clear picture as to what the provisions of the Bill are. That is a better procedure and we shall proceed with clause 2.

As regards Pandit M. B. Bhargava's amendment, it more or less seeks to amend clause I and he wants to put in a new condition for the application of the provisions of the Bill. **Dr. Ambedkar:** It is really an amendment to clause 1.

Pandit M. B. Bhargava: I may be allowed to explain.

Mr. Speaker: The amendment says:

" That this Code or only such part of it shall come into force if and when it is ratified on a referendum by majority of the Hindu electorate of Parliament. "

That is, really speaking, an amendment to sub-clause (3) of clause I, though he places it as a separate new clause. No further arguments are necessary and I shall proceed with clause 2.

Shri Sarwate (Madhya Bharat) : Will the official amendments be moved first or will mine be taken up first ?

Mr. Speaker: I am going by the order so far as the provisions of the Bill go. The official amendments will come later on.

Shrimati Durgabai: If the official amendments are moved first they may cover the points to be raised later by non-official amendments.

Mr. Speaker: We will go by the order.

Dr. Ambedkar: May I make a suggestion in the interest of economy of time.

..

Shri Tyagi: Withdraw the Bill: that is the best economy of time.

Dr. Ambedkar: That would be too much of an economy. If you look at the various amendments which stand on the order paper you will see that most of the amendments are mere variants of one another. There is no amendment, which is very substantially different from the other amendments. I was

therefore suggesting whether it would not be a proper procedure to permit Members to move their amendments and then to have a general discussion rather than to permit each amendment to be moved, have a debate on it and then to dispose of it, thereafter have another amendment moved, have a debate on it and then to dispose of it. I was thinking that in the interests of economy of time the procedure I was suggesting might appeal to you.

Mr. Speaker: In fact, we have been following that procedure. Where amendments involve a common point, all the amendments are moved and there is a common discussion. That is the practice which we have been following in the past and therefore, I shall follow that practice here too.

Shri Sarwate: I beg to move: For clause 2, substitute:

" 2. *Application of Code.* —(1) This Code applies to all Hindus. (2) The expression ' Hindu ' in this Code, shall, unless otherwise provided, mean a citizen of India.

(3) Notwithstanding anything contained in the Special marriage Act, 1872 (III of 1872), this Code shall apply to Hindus, as defined in that Act, and whose marriages have not been solemnised under the provisions of that Act prior to the commencement of this Code. "

Mr. Speaker: May I suggest one thing more. Those amendments that are printed, as well as others too, have been circularised. So hon. Members may only mention the number of the amendment they propose to move and I shall take it that it has been moved. All the amendments relating to one clause and one subject will be moved and discussed.

Shri Tyagi: The point, which the amendments seek to amend, will be discussed separately.

Mr. Speaker: Yes.

The Minister of State for Transport and Railways (Shri Santhanam): Sir, is it in order to go against the fundamentals of the Hindu Code itself. The amendment seeks to apply the Code to all Christians, Muslims and others. Does it not go beyond the Code itself? I would like a ruling from you. Sir, on that subject.

Mr. Speaker: Let the amendments be moved first.

Shri Tyagi: The amendment seeks to Hinduise the Muslims, which is against the law or Constitution. Everybody has been guaranteed the liberty of practising his religion and to bring the Muslims and Christians also under the Hindu Code will mean interfering with their religion.

Mr. Speaker: Let the amendments be moved.

Shri Tyagi: This amendment has been moved and therefore it is out of order.

Shri Indra Vidyavachaspati (Uttar Pradesh): I beg to move: For clause 2, substitute:

" 2. This Code applies to all Indians irrespective of their religion, caste or creed".

Pandit Thakur Das Bhargava: I beg to move: For clause 2, substitute: " 2. Subject to the provisions of section I this Code applies—

(a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion;

(b) to any other person who is not a Muslim, Christian, Parsee, or a Jew by religion;

(c) to every woman who married any person who was not a Muslim, Christian, Parsee or a Jew by religion;

(d) to any child legitimate or illegitimate one of whose parents was a person who was not a Muslim, Christian, Parsee or a Jew by religion; (e) to a convert to any religion except the Muslim, Christian, Parsee or Jew by religion."

(e) to a convert to any religion except the Muslim, Christian, Parsee or Jew by religion."

Shri Jhunjhunwala (Bihar): I beg to move: For clause 2, substitute:

" 2. *Application of Code.*—This Code applies to all the citizens of India that is Bharat, irrespective of their caste, creed and irrespective of their belonging to or professing any religion."

Dr. Ambedkar: I beg to move: In clause 2,— (1) in sub-clause (1),—

(i) in part (a), for " Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hindus by religion " ;

(ii) in part (d), for " Hindu religion " substitute " Hindu, Buddhist, Jaina or Sikh religion "; (2) omit sub-clause (4). **Shri Naziruddin Ahmad:** I beg to move:

(i) In part (a) of sub-clause (1) of clause 2, for " Hindus, that is to say, all persons professing the Hindu religion" substitute " persons who are Hindus by religion ". (ii) Omit part (b) of sub-clause (1) of clause 2. (iii) For part (b) of sub-clause (1) of clause 2, substitute:

" (b) to all persons who are Buddhists, Jains or Sikhs by religion ". (iv) For part (b) of sub-clause (1) of clause 2, substitute:

" (h) to any person who is a Jaina by religion ; ". (v) In part (h) of sub-clause (1) of clause 2, for " Jaina or Sikh ",

substitute " or Jaina ". **Sardar Hukarn Singh (Punjab):** I beg to move: In part (b) of sub-clause (1) of clause 2. omit "or Sikh".

Shri Naziruddin Ahmad: I beg to move:

(i) In part (c)(i) of sub-clause (1) of clause 2, after " illegitimate " insert:

" who, if he has attained the age of eighteen years, is himself a Hindu and "

(ii) In part(c) (i) of sub-clause (1) of clause 2, for " whose parents are Hindus " substitute " whose parents are or have been Hindus ".

(iii) In part (c) (ii) of sub-clause (1) of clause 2, after " belongs or belonged " insert " and who, if he has attained the age of eighteen years, is himself a Hindu ".

Shri S. P. Misra (Uttar Pradesh): I beg to move: After part (c) (ii) of sub-clause (1) of clause 2, add:

" (iii) to any abandoned child brought up as a member of the community, group or family to which such parent belongs;".

Shri Naziruddin Ahmad: I beg to move: For part (d) of sub-clause (1) of clause 2. substitute:

"(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion. "

Bahu Gopinath Singh(Uttar Pradesh): I beg to move: After part (d) of sub-clause (1) of clause 2, add: "(e) to a Muslim or Christian converted from Buddhism, Jainism, Sikhism or Hinduism in his life time ".

Shri Naziruddin Ahmad: I beg to move:

Omit sub-clause (2) of clause 2. **Sardar Uukarn Singh:** I beg to move:

In sub-clause (2) of clause 2, after " Parsi " insert " Sikh ".

Shri Brajeshwar Prasad (Bihar): I beg to move: After sub-clause (2) of clause 2, insert:

" (2A) This Code also applies to any woman professing any religion who has married a Hindu, Buddhist, Jain or Sikh."

Shri Naziruddin Ahmad: I beg to move: (i) Omit sub-clause (3) of clause 2. (ii) Omit sub-clause (4) of clause 2. (iii) After sub-clause (4) of clause 2, add:

" (5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any State from such time or by such stages as the State Legislature may from time to time by Act provide."

Shri Jhunjunwala : I beg to move: To clause 2, add the proviso:

" Provided, however, that notwithstanding anything contained in the above clauses, this Code shall not apply to any person, unless such person got his name registered with such authority, and in such manner, as may be hereafter prescribed by Parliament, within one year after this Code comes into force and in case of a minor within one year after such a minor attains majority. "

Mr. Speaker: I called out each Member who has tabled his amendment or amendments and I find that Shri Shiv Charan Lal and Prof. K. K. Bhattacharya were absent when called. But, as we are following a procedure of calling out the number of the amendment it is possible that these two Members may not have expected that they would have been called so soon as that to move their amendments. Though I am very clear that (hey should have been in their seats when the Bill is taken up for discussion, as we are starting this procedure in the beginning. I am thinking of permitting them to move their amendments later on if they turn up in the House and wish to move them during the course of discussion on this particular clause.

Shri J. R. Kapoor (Uttar Pradesh) : Sir, there are two amendments of which I have given notice. One of them is an amendment to Shri Jhunjunwala's amendment No. 18 in Supplementary List No. 1.

Mr. Speaker: Is the hon. Member moving further substantial amendments?

Shri J. R. Kapoor: No. I may be so called but not No. 2.

Mr. Speaker: No 2 of course is an amendment to the amendment of Shri Jhunjhunwala. That I am accepting for moving.

Shri J. R. Kapoor: So far as No. 1 is concerned, it does so happen that it has been given the shape of an absolutely original amendment though I had given it to (the Notice Office in the form of an amendment to Mr. Jhunjhunwala's amendment No. 13. To put it in a better form the office has given it as a separate amendment. Therefore, I hope you will admit it. The whole thing will be open to discussion and the admission of this will not in any way interfere with the proper disposal of the subject.

Mr. Speaker: It is not a question of disposal. If I were to permit amendments at the last minute, they will be coming in even till the last stage of voting. Therefore, I am unwilling to waive

Shri J. R. Kapoor: Sir, I was making this submission only in view of the special circumstances of the case. Originally I had put in the first amendment as an amendment to Shri Jhunjhunwala's amendment No. 13 in Supplementary List No. 1. But then to give it a better form the office thought it might be put as a separate substantial amendment. If the Chair is so pleased it can be taken in the original form.

Mr. Speaker: Very well. As it is a change in form only I will permit him to move it.

Shri J. R. Kapoor: I beg to move: (i) For clause 2, substitute:

" 2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for (the purpose by the Central Government." I also beg to move:

(ii) In the amendment proposed by Shri Banarsi Prasad Jhunjhunwala, in the proposed proviso to clause 2, for the words beginning with the words "unless such person" to the end, substitute:

" unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government. "

Mr. Speaker: Amendments moved:

1. For clause 2, substitute:

"*2. *Application of Code.*—(1) This Code applies to all Hindus.

(2) The expression 'Hindu' in this Code shall, unless otherwise provided, mean a citizen of India.

(3) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872). this Code shall apply to Hindus, as defined-in that Act, and whose marriages have not been solemnised under the provisions of that Act prior to the commencement of this Code. "

2. For clause 2, substitute:

" 2. This Code applies to all Indians irrespective of their religion, caste or creed."

3. For clause 2, substitute: " 2. Subject to the provisions of section I this Code applies—

(a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion;

(b) to any other person who is not a Muslim, Christian, Parsee, or a Jew by religion;

(c) to every woman who married any person who was not a Muslim, Christian, Parsee or a Jew by religion;

(d) to any child legitimate or illegitimate one of whose parents was a person who was not a Muslim, Christian, Parsee or a Jew by religion;

(e) to a convert to any religion except the Muslim, Christian, Parsee or Jew by religion. "

4. For clause 2, substitute:

"2. *Application of Code.*—This Code applies to all the citizens of India that is Bharat, irrespective of their caste, creed and irrespective of their belonging to or professing any religion. "

5. In clause 2, — (1) in sub-clause (1), —

(i) in part (a), for " Hindus, that is to say, all persons professing the Hindu religion " substitute " persons who are Hindus by religion";

(ii) in part (d), for " Hindu religion " substitute " Hindu, Buddhist, Jaina or Sikh religion "; (2) Omit sub-clause (4).

6. In part (a) of sub-clause (1) of clause 2, for, " Hindus, that is to say, all persons professing the Hindu religion " substitute " persons who are Hindus by religion " .

7. Omit part (b) of sub-clause (1) of clause 2.

8. For part (b) of sub-clause (1) of clause 2, substitute:

" (b) to all persons who are Buddhists, Jainas or Sikhs by religion; " .

9. For part (b) of sub-clause (1) of clause 2, substitute: " (b) to any person who is a Jaina by religion " .

10. In part (b) of sub-clause (1) of clause 2, for " Jaina or Sikh ", substitute "or, Jaina".

11. In part (b) of sub-clause (1) of clause 2, omit " or Sikh " .

12. In part (c) (i) of sub-clause (1) of clause 2, after " illegitimate " insert :—

" who, if he has attained the age of eighteen years, is himself a Hindu and " .

13. In part (c) (i) of sub-clause (1) of clause 2, for " whose parents are Hindus " substitute " whose parents are or have been Hindus " .

14. In part (c) (ii) of sub-clause (1) of clause 2, after " belongs or belonged " insert " and who, if he has attained the age of eighteen years, is himself a Hindu".

15. After part (c) (ii) of sub-clause (1) of clause 2, add:

" (iii) to any abandoned child brought up as a member of the community,

group or family to which such parent belongs; "

16. For part (d) of sub-clause (1) of clause 2, substitute:

"(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion. "

17. After part (d) of sub-clause (1) of clause 2, add:

" (e) to a Muslim or Christian converted from Buddhism, Jainism, Sikhism or Hinduism in his life time. "

18. Omit sub-clause (2) of clause 2.

19. In sub-clause (2) of clause 2, after " Parsi " insert " Sikh ".

20. After sub-clause (2) of clause 2, insert:

" (2A) This Code also applies to any woman professing any religion who has married a Hindu, Buddhist, Jain or Sikh. "

21. Omit sub-clause (3) of clause 2.

22. Omit sub-clause (4) of clause 3.

23. After sub-clause (4) of clause 2, add:

" (5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any State from such time or by such stages as the State Legislature may from time to time by Act provide. "

24. To clause 2, add the proviso:

" Provided, however, that notwithstanding anything contained in the above clauses, ' this Code shall not apply to any person, unless such person got his name registered with such authority, and in such manner, as may be hereafter prescribed by Parliament, within one year after this Code comes into force, and in case of a minor within one year after such a minor attains majority. "

25. For clause 2, substitute:

" 2.,. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government. "

26. In the amendment proposed by Shri Banarsi Prasad Jhunjunwala, in the proposed proviso to clause 2, for the words beginning with the words " unless such person " to the end, substitute:

"unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government. "

Shri Naziruddin Ahmad: Sir, I would like to suggest a shortcut. There are a large number of amendments, though governing almost the same matter. I think if all these matters are discussed together there would be confusion and

I think, from experience, that we will not get replies to our points. If we consider separately, we can curtail our speeches to prevent repetition. I suggest this only as a matter of opinion.

Mr. Speaker: If we are all determined not to repeat the same thing over again, we need not be very much afraid of repetitions. Of course, the Chair may be put to a much greater strain in watching that there are no repetitions, but the Chair will try its best to do so.

Dr. Ambedkar: And apply sanctions to Mr. Naziruddin Ahmad !

Shri Sarwate : Sir, at the outset an objection has been raised that my amendment would enlarge the scope of the Bill. In the course of my speech, I shall try to show that if it does so at all, it is not being inconsistent either with the object of this Bill or with the provisions of the Constitution.

[PANDIT THAKUR DAS BHARGAVA IN THE CHAIR.]

As far as I know, there has been no one definition of " Hindu ". The connotation and denotation of the term " Hindu " has varied from time to time and from place to place. Possibly, there would be a time when it would come to mean what I have suggested in my amendment. I may quote certain instances where the term " Hindu " is interpreted variously. *Satyarthaprakash*, I am told, does say that " Hindu " means : " whosoever resides in India ". *Savarkar*, reformer of Bombay has suggested that whosoever is born in India and who holds her as his sacred land is a Hindu. He has suggested:

Aa Sindhu paryata, yatsya Bharat bhuika

Pitubhah punyabhucshaiva, sarve hinduriti smrutah:

That is to say, one who considers India to be his homeland and also as his sacred land should be considered as Hindu. I need not point out that in America and also probably in South Africa everybody who comes from India is known as " Hindu ". Therefore, my amendment does not seek to do anything novel but is in conformity with the interpretation which has been tried to put on this term " Hindu ". Again, I may point out that in this Bill itself, the term " Hindu " is not restricted to Hindu law, whatever that may mean. In sub-clause (a) of the definitions, it is said to apply:

" to all Hindus, that is to say, to all persons professing the Hindu religion ", and in (b): " to any person who is Buddhist, Jain or Sikh by religion ".

So, this Bill seeks to extend the provisions to Hindus plus Sikhs plus Buddhists plus Jains. I need not go into the history of the Hindu religion. Jainism was certainly at one time opposed to and contradictory to the Hindu religion, if that means *Sanatoria Vedic Dharma*. Whereas *Sanatana Vedic Dharma* relied on the *Vedas* Jainism did not rely the *Vedas*. Therefore, Jain and Hindu *Sanatana Vedic Dharmas* were entirely different religions.

The House then adjourned for Lunch till Half Past Two of the Clock.

The House re-assembled after Lunch at Half Past Two of the Clock.

[PANDIT THAKUR DAS BHARGAVA IN THE CHAIR.]

Shri Sarwate: When the House rose for lunch I was trying to show that in the Bill along with Hindus, persons of other religions are also sought to be included—religions which were contradictory to and opposed to Hindu religion, *i.e.*, *Sanatana Vedic Dharma*. For instance, Buddhism was against Hinduism; so also was Jainism. But these two religions have been included in the Hindu Code Bill. So, if the mover of the Bill is entitled to include certain religions other than Hinduism, then I am entitled to move that certain other religions may also be included and in doing so I think I shall not be outside the scope of the Bill.

I was going further to show that the Bill under discussion also seeks to codify and *reform* Hindu law, if I remember aright, it has been stated in the Statement of Objects and Reasons. Possibly that has been done to obviate or remove any possible difficulty that the Constitution may bring in at this stage or later on. What I mean is this. Article 25 of the Constitution lays down that all citizens of India are equally entitled to freedom of conscience and the right freely to profess., practise and propagate religion. If as man were free to practise his own religion, then he would certainly be at liberty to marry according to the tenets of his religion. But what is sought to be done by this Bill is that he will be forced to marry in a particular way. The principles laid down in this Bill may be entirely opposed to the tenets of his religion. I have a feeling that objection to this may probably be sought to be covered by the subsequent clause of article 25 which reads :

" (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. "

By my amendment I want to reform what is Hindu religion. I want to reform Hinduism by widening its scope to all those persons who are citizens of India, including Christians, Parsis, Jews, etc.

Now, Sir, what is Hindu law ? Hindu law is said to be based on *Shruti* and *Smriti*, that is *Vedas*. Further it is said that that is not the only source. The other source is the enactment by proper legislature or proper authority. So, let us say that enactment plus *Vedas* is equal to Hindu law. If X represents *Shruti* and *Smriti* and Y represents enactment, Hindu law is equal to X plus Y. The value of X in the beginning was 100 and that of Y zero. But as time went on encroachments were made by enactments one by one with the result that the position was completely changed.

The very basis of the Hindu religion is the caste system and secondly the particular way in which marriage is held. It is held to be sacred ; it is held to be sacramental and therefore it is said to be indissoluble. It cannot be dissolved. There cannot be a divorce according to the strict *Sanatana Vedic Dharma* as practised by orthodox Hindus. But one by one these fundamentals are being removed. For instance, divorce is allowed. In certain cases castes have been totally ignored and in this Bill it has been said that there will be no caste. So this Bill takes away the whole basis of ' Hinduism ' according to the *Sanatana Vedic Dharma*. What this Bill seeks to do is that whereas previously X was hundred and Y was zero and the total was hundred, X is sought to be reduced to zero and Y raised to hundred. They are exactly reversing the position. While once the *Shruti* and *Smriti* was the whole source and enactment nil, now the enactment would be the whole source and *Shruti* and *Smriti* nil. Therefore, what I am now saying is that instead of giving this benefit only to those who are *Sanatana Vedic Dharmas* it should be extended to all. That would be doing on the professed lines of the Bill. My object is to give equality to all persons who are inside the limits of India. I am neither partial to the Hindus, nor to Sikhs, nor to anybody else.

It may perhaps be pointed out that I am trying to extend the scope of the Bill to persons who were not examined; for instance, Christians and Parsis were not examined, and that it would be unfair. My answer is that it would be unfair to include the Sikhs either because they were not examined. So, in point of fairness there is not much to choose between the provisions of the original Bill and the amendment, which I am seeking to move. The logical course would be to examine those persons who were not examined previously and to get their opinion. If necessary the Bill may be held over or returned to do this.

The chief claim of this Bill is said to be this that it is based on a very good sense of fair play, justice and equity. Suppose it is said, for instance, a person has three sons and three daughters. If he has affection for his sons, he has equal affection for his daughters. If the sons are to inherit because they are born of the parents, it follows that the daughters also having been born of the parents they should also take the inheritance. That is the only reason that can be advanced for giving the inheritance to the daughter, namely, that she is born of her parents, and therefore she necessarily ought to get a share in the property of the father. In a way it is right. Then it should be right not only in the case of Hindus but of Muslims and Sikhs also; it should be so in the case of Christians and others. Therefore, if the law has to be amended it should be made applicable not only to Hindus but to all citizens who happen to be within our jurisdiction and for whom we can legislate.

And here I have a very good support. I shall just quote what Dr. Ambedkar himself has said at a previous stage of the Bill—i am quoting from page 3651 of the report of the proceedings of the House:

" If my hon. friend's alternative was that there ought not to be communal

laws of inheritance and communal laws of marriage but there are to be a common Civil Code applying to all sections, all communities, in fact applying to citizens without discrimination as to religion, cast or creed, I am certainly one with him. " He said this in the course of the discussion on the Hindu Code Bill at some previous stage.

An. Hon. Member: He has changed his opinion.

Shri Sarwate: He should keep his word. There is also a provision in the Constitution in my favour, and that is article 44 which says:

" The State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India. " A Civil Code necessarily means a Code, which deals with marriage, inheritance, adoption and so on. The scope of the Civil Code is co-terminus with and almost the same as that of the Hindu Code Bill. The article in the Constitution says that "the State shall endeavour... ", which is being made by this amendment. So it is but proper that the earliest opportunity should be taken to put this provision of the Constitution into effect and Dr. Ambedkar should be the first person to accept my amendment.

While the discussion on this Code was going on in the previous session, some of my Muslim friends, and also some of my Parsi friends, expressed their entire satisfaction and were very loud in praising the provisions of this Code. I would welcome them and appeal to them to support me. When they consider that the provisions are so good and reasonable, they should follow up their convictions by similar speeches as the one which I am at present making, namely, that the Code should be made applicable to all.

I say that the expression " Hindu " in this Code shall, unless otherwise provided, mean a citizen of India. I have put in the expression " unless otherwise provided " for this reason, namely, that if certain provisions of this law are not applicable to people of certain religions, if for instance they think that adoption is not necessary for them, they can move that for the purposes of adoption " Hindu " should not include, for instance, a Muslim or a Christian. The phrase " unless otherwise provided" would show that it is sufficiently elastic. My definition would be sufficiently elastic to enable every religion to adapt the Code to its own tenets or whatever hon. Members think that their religion requires them to do. So there should be no difficulty in this way either. For instance the Roman Catholics think that divorce is not allowable in their case. If they are convinced they can say that for purposes of divorce " Hindu " should not include a Roman Catholic.

According to this Code there can be two ways of marriage, sacramental and civil. Sacramental marriage would mean a marriage done according to religion. It may be any religion—It may be Hindu, Jain, and Christian. That does not come in the way either. For instance there are necessary ceremonies in the *Sanatana Vedic Dharma*. What I am suggesting is that people of those religions need not be afraid that their whole religion would be nullified.

Shri Tyagi: What about those who are already married according to another Code?

Shri Sarwate: My hon. friend Mr. Tyagi may suggest the necessary amendments at the proper stage for that.

I, therefore, suggest that my amendment meets the provisions of the Constitution; it is in conformity with what has been said by the Mover of the Bill, the Hon. Dr. Ambedkar; it meets also all the claims, which have been made for this Bill, those of logic, justice and fair play. I therefore commend my amendment to the House and to the Mover of the Bill for acceptance.

Mr. Chairman: There are some amendments from the hon. Member Shri Gopinath Singh. They have come today. The rule in this House has been that unless the hon. Member in charge of the Bill consents, the Chair does not allow them. The notice has been received only today; I would ask the Hon. Dr. Ambedkar if he is willing to accept them.

Dr. Ambedkar: I have not got copies of those amendments at all and I cannot say anything.

Shri Indra Vidyavachaspati : *(English translation of the Hindi Speech)* Sir, my amendment is that the Hindu Code Bill when passed, should be made applicable to every Indian. There should be no distinction of caste, creed or religion therein. This is my amendment. In the beginning, I would like to submit as to why I am speaking today, I have been a member of this Parliament for one year. But I have not taken a single minute of the House. It was because our Hon. Speaker had said that every minute of parliament costs fifty rupees. Thus I have saved thousands of rupees of this Parliament, but I am not inclined to make a saving today. The reason is that I have a fear lurking in my mind. The fear is that I feel there would be difficulties both if this bill is passed and if it is not. I am a staunch social reformer and I want that there should be such legislations for social reforms. The State has a right to frame laws for making reforms in the society. Therefore, what I want to point out is that it cannot be said that it is an interference with any religion. On the other hand I am of the opinion that the State and the legislature must take steps to provide for such legislations relating to social reforms. I do not say that this Bill should not be passed but I am afraid, this bill will not be passed in the form in which it has been presented although Dr. Ambedkar and our Prime Minister have repeatedly expressed the view that it would be passed. I think even in a long session as the Budget Session, we will not be able to pass it unless the guillotine is used. But it is not proper to use guillotine in the case of such bills, which affect the whole country. So, this is the first difficulty. The other difficulty is that by passing the Bill in its present form, we will give encouragement to an evil which must not be there and against which we have always stood up. And that evil is communalism. If we pass the Hindu Code Bill, this evil of communalism will raise its head forever. As this Bill is not applicable to all sections of the Population. It will definitely give rise to

communalism. If the Bill is not passed, I fear the avenue of making social reforms through legislation may be closed for ever. I have very little hope of its being passed but if it is passed the feeling of communalism will arise and what should have been a boon will turn into a curse. Therefore, when I saw these obstacles and difficulties in the way of social reforms. I decided to say something. I would clearly submit that I am in favour of making laws relating to social reforms. I do not want to go into the details of the proposed reforms, but I would like to say a few words on subjects like polygamy. I want that monogamy should be enforced by law in our country not only for Hindus but for all sections of the population. In the same way, I also say that there should be justice for women and their economic rights should be safe-guarded. I do not believe that only Hindu women are oppressed. There are women of other communities as well who are also oppressed. These atrocities must go. It is better if the society itself removes these atrocities, otherwise law must intervene. If a Constitution can be enacted on principles of equality and equity for the whole of the country, why not laws be made for the entire society? In the same way I think, there is the question of divorce. We hear many quotations from the *Shastras* against it. I do not want to discuss that subject but I can say on the basis of *Dharma Shastras* as that it is wrong to say that this has not been mentioned in the *shastras*. Everything for and against a certain subject is given there. There are 137 *Smritis*. In the principal one i.e. *Manusmrit* it is written:

Vidvadbhi Sevitah Sadbhirnityamadwesharagibhih

Hridayenabhyanuogyatoyo dharmastannibodhata Sannibodh.

(meaning thereby the Dharma is that which is constantly practised by the good, the learned and those who are devoid of prejudice and attachment and which is in full accord with the heart).

Manu has himself said that there were *Smritis* before him. So these *Smritis* are in existence for a very long time. It is wrong to say that there should be no reforms in our society. It will put an end to all the progress in our country. All necessary reforms in the society must be made. I will not go into details because the Bill will be discussed clause by clause later on and amendments can be made at that stage. Therefore I am not in favour of postponing it. But one thing seems certain, that many difficulties will arise if it is passed in this very form. In my opinion, the government may enact an Indian Code, but it should be applicable to the whole country. The reforms should be made for the whole of India.

I will now point out the disadvantages of its being applicable to Hindus alone. Firstly according to the Constitution of free India, we do not want communalism to grow. Ours is a secular state. Under these circumstances, the Government cannot make any law for a particular community. The lawyers can discuss a lot on this subject, but as a layman, I would only submit that in a State where religion has not been given any place or consideration, it

is against all justice to frame laws for the followers of a particular religion alone, and such a step will always encourage sectarianism.

This Bill originated in the days of British rule. During that time, Hindus and Muslims were used to be kept apart from each other and everything was done to encourage communalism. Thus, the Bill started in that form. I want to submit as to why this remnant of the British period be allowed to stick on while we have thrown out all others so that there may be no discrimination against a particular section of the society.

Shrimati Durgabai: On a point of order. Sir I understand the hon. Member is raising the question of competency of this Parliament...

Some Hon. Members: No. No.

Shrimati Durgabai : At least that is what I understood him to say. If that is so, I wish to tell him that that issue had already been decided.

Mr. Chairman : I am sorry the hon. Member has not understood the point the Hon. Member was making. He never said that this House is not competent but, on the contrary, he holds that this House is fully competent.

Shri Indra Vidyavachaspati: Let me finish all that I have to say and then perhaps there will be no doubt in this regard.

By this Bill the Government want to achieve a big thing that is they want to remove all injustice that is done to the women. I do not think there is any Indian social reformer who will not co-operate with the Government in this matter or who will not support this move. ' But I would like to ask one thing from those who want to remove this injustice done to the Hindu women. This is also an injustice that a man can marry four women at a time but a woman is not allowed to do so. This is an injustice. It Must go. Is this injustice done to Hindu women alone and not to Muslim women also? I ask my sisters whether they will tolerate that justice should be done only to Hindu women and not to Muslim women? This injustice done to them must also be removed.

How it can be tolerated that injustice may continue to be perpetrated on them. Why do not the Government include them in this Law? It is said that if any such Laws for Muslims and others are enacted, it would mean interference in their religion. If the enactment of social laws is interference in their religion, how this law is not an interference in religion of Hindus also. We therefore should make such a law, which may be applicable, to all. If it is interference in religion, it is for all. I am of opinion that it is not an interference. The law should be applicable to all alike, Muslims, Sikhs and Christians. There should be no discrimination. There should be no discrimination about it. It is as much our duty to do justice to Muslim women and women of other religions as we do justice to Hindu women. Therefore the present form of this Bill should not be there.

There is another aspect. We may have to face some difficulties regarding this enactment. As we know in Bombay the Bigamy Act was challenged in the High Court and the High Court declared it *ultra virus*. The news has appeared

in the newspapers also.

Several Hon. Members: Not High Court, Lower Court.

Shri Indra Vidyavachaspati: Well, let it be Lower Court. Such difficulties may arise. This Act will be challenged in the court. In his recent statement in Bombay, Dr. Deshmukh had invited our attention towards this aspect. We will come across such a difficulty if we pass this bill and if it is challenged and the issue is referred to High Court or Supreme Court then we may have to face new difficulties. Such difficulties may arise if we make it applicable only to Hindus. The Government may well realise that more than sufficient time has passed since this Bill has been introduced and why it has not been possible to make any progress in it. Even the Reformist Hindu Organisations do not support it fully. Even the Reformers are moving amendments to it. To my mind the reason for all this is that we have adopted a wrong measure for social reforms. If a few lines are put in wrongly, there are two ways to correct them. In the first instance we may draw a line in between them or secondly rub them out and draw a fresh straight line instead. But what is being done is that one line is joined with the other line, thus forced insertions are being made. In my opinion the best course would be to withdraw it for reconsideration and introduce such a revised Bill that may have full support. As we have set up uniform political order and economic order in the same way we should introduce such a social order that may be applicable to the whole of the country. Such a Bill should be brought forward.

If Hindu women face some difficulties, the Muslim women also face them. When we have framed such a comprehensive Constitution and set up a uniform economic order for the whole of the country then it is not very difficult to draft such a Bill. Remember,, truth is eternal; place, time and person cannot prove obstacle in it. If this principle holds good, then it should be true for all, and if it is not true then it cannot be true for anybody. I think the intention of Government is good. It would be better if that is utilised for the benefit of the whole country. This Bill should be redrafted and introduced here.

I want to submit one thing more, that here we faced the greatest of legal difficulties and complications, all those have been solved and many laws have been passed because of the fact that today the country wants to make progress on the basis of equality and freedom, and is willing to accept all those laws as are based on equality. If a Bill is drafted on this principle and made applicable to the whole of the country surely it would be accepted. This is my viewpoint. But this Bill is not so. Although the Government are very hopeful, it is very good that they are optimist, but they will find many difficulties in getting this bill passed, it will require a three months' session, even then with great difficulty they will be able to get it passed and then even after that there are many obstacles to be faced. Even if this Bill is got passed we will have to face several difficulties before it is enforced, and we will be

involved in legal difficulties. I, therefore, will ask those who have framed this Bill, and especially Dr. Ambedkar, who has laboured hard for it and has worked with firm determination, to broaden their outlook, and with their abilities of legal profession, should make such laws as may be applicable to all Indians instead of Hindus alone. The present minor drawbacks in the Bill would be removed automatically as the path of truthfulness is straight.

[MR. SPEAKER IN THE CHAIR]

I also wish to say this to my hon. sisters that as they want that full justice should be meted out to Hindu women, similarly full justice should also be done to Muslim women and women of other religions. They may argue as to who would accept them. But in Turkey reforms have taken place; it is a Muslim country, and there all have accepted those reforms. As these reforms have been accepted in that Muslim country, similarly here also these reforms will be accepted. Therefore our sisters should adopt the right course and accept these reforms without making any discrimination among themselves. Only then we will be able to get it passed and if it is passed under such circumstances, then such difficulties will not crop up. Otherwise we have great difficulties before us and if we get it passed even then we will have to face many difficulties.

I may tell them that I am not saying all this to put hindrance in the progress of the Hindu Code Bill. I am a staunch reformer and want that it should be passed, and with this very intention. I am submitting that it should be so modified as to be made applicable to the whole of the country. It can be made applicable only after such a change, otherwise not.

Shri Shiv Charan Lal (Uttar Pradesh): I beg to move an amendment standing in my name. I was not present when I was called.

Mr. Speaker: He can move it now.

Shri Shiv Charan Lal: I beg to move:

Omit the proviso to sub-clause (2) of clause 2.

Mr. Speaker : Amendment moved : Omit the proviso to sub-clause (2) of clause 2.

Shri J. R. Kapoor: Sir, with your permission, I may read out the amendment on which I wish to speak, to refresh the memory of Hon. Members, The amendment runs thus:

For clause 2.....

Shri Jhunjunwala : Which amendment is the hon. Member referring to ?

Mr. Speaker: It is an amendment which he has given notice of today. It is not printed in the list.

Shri Jhunjunwala: We have not got copies of that.

Mr. Speaker: It was once read to the House; he is reading it again.

Shri J. R. Kapoor: The amendment runs thus: For clause 2, substitute:

" 2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, at the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government.
"

Secondly, there is an alternative amendment. If this is not acceptable, I would commend the other alternative amendment to the acceptance of the House. The alternative amendment runs thus:

In the amendment proposed by Shri Banarsi Prasad Jhunjunwala, printed as No. 18 in Supplementary List No. I in the proposed proviso to clause 2, for the words beginning with the words " unless such person " to the end, substitute:

" unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government. " Mr. Jhunjunwala's amendment, as further amended by me, would run as follows:

" 2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat..... " and then follows that this will be applicable only to those persons who would make a declaration in writing and so on and so forth; I need not repeat that.

Sir, I propose this amendment with a full sense of responsibility, and I hope I will not be misunderstood, as I hope the two previous speakers would not be misunderstood, for my amendment it is very much in line with the two amendments which have already been moved by my friend Mr. Sarwate and my friend Shri Indra Vidyavachaspati. Only mine is an improvement on theirs. I would like to submit first of all, that in proposing this amendment, I am actuated more particularly by the consideration that this Hindu Code should have an easy passage in this House. That is my first consideration. My second consideration is that it should be easily acceptable to the country as a whole, to the various sections of the community, to the various sections of the nation. And thirdly my consideration is that it should not be said of us that in this Parliament, in this country where we have a secular State, where we took very great pains to frame a constitution with the background of a secular State, we are now trying to legislate in a manner which smells of communalism, which clearly indicates that we are trying to legislate for one section of the community and not for the others, that we are trying to legislate for persons who profess one religion and are ignoring the interests of those who profess another religion, or *vice-versa*, that we are trying to do something to encroach upon the rights and religious customs of one section of the community and are afraid to encroach upon the rights and privileges of another section of the community professing another religion. Therefore, I

submit that if my amendment is accepted, it will have very many advantages and absolutely no disadvantage.

I was very happy to hear the point of order raised this morning by my friend Mr. Naziruddin Ahmad, not that I was particularly in agreement with the point of order raised by him, but because of the considerations and the reasons behind his point of order, and the considerations which weighed with him in raising that point of order. He raised the point of order, that the Constitution does not permit us to enact a discriminatory legislation. He referred to article 15 of the Constitution. He referred also to article 25. I feel that the idea working in his mind was, if the provisions of the Hindu Code are beneficent and useful, why should they not be applicable to other sections of the Nation also? And what is in his mind, I am sure, is in keeping with the signs of the times. He would, I am sure, be glad, according to the point of order raised by him, to make an attempt to enact a legislation which would be applicable to all sections of the nation, Hindus, Muslims, Parsis and Christians. There is, of course, another article of the Constitution—article 44 to which reference was made by my friend Mr. Sarwate, that the State shall attempt to have a uniform Civil Code. True, that article is not included in the chapter of Fundamental Rights, but it is under the chapter dealing with the Directive Principles. The Constitution directs us specifically that we should make an attempt to have a uniform Civil Code for the whole country. Well, this is the first occasion when we are attempting to have a Civil Code and in this very first attempt, will it be proper for us, will it be desirable for us to ignore this very important article of the Constitution? Let us not make a beginning by doing something contrary to the specific directive that has been given to us by the Constitution. When we were sitting as the Constituent Assembly— we all were in it, most of us, and many other eminent persons who are not here were also there—many Muslim Members were also there, and there were Parsis also, and there were also Christians, and persons professing every faith were there. All of them, as far as I remember, unanimously agreed to these clauses in the Constitution, I mean articles 15, 25 and 44. When all those persons professing every faith, were seriously and coolly and calmly considering what sort of legislation we should have in this country, they all unanimously decided that we should have a uniform legislation, so as to be in conformity with articles 15 and 25 of the Constitution, and also article 44. What has happened since then and now to compel us, to persuade us not to act according to those articles of our Constitution? Nothing has really happened since then, which should persuade us to go. contrary to those provisions. On the other hand, we find that even persons professing religions other than Hinduism, are also anxious that we should have a uniform Civil Code. Mr. Naziruddin Ahmad is a representative of the Muslims. He himself says that it is not open to have a legislation, which will govern only one section of the nation, but that one legislation, must govern all the sections of the nation, all persons professing various religions.

That being so, I submit there is no reason why we should hesitate to legislate for persons professing different religions. From the amendments that have been tabled and have already been moved. I find that the Sikhs would like to go away from the operation of this Code. That is the effect of one of the amendments moved by my hon. friend Sardar Hukam Singh. Then I find that there are other Hon. Members who are anxious that this clause 2 should be so amended that it should not be applicable necessarily to all the States and all the community. My Hon. Friend Pandit Thakurdas Bhargava, as we all know, is a very great social reformer, and he is always anxious to introduce legislations in this House directed towards social uplift. According to his amendment what he wants is that it should be left open to the various States to adopt the legislation or not. He also desires that it should be open to the various communities either to be governed by the Code or not.

Shri Tyagi: Surely it will not be territorially uniform in that case.

Shri J. R. Kapoor: Exactly. In order to make it applicable to all the territories and communities my amendment should be accepted. It does not restrict the operation of this Code to one territory or another, nor to one community or another. On the other hand it extends the scope of this legislation and seeks to embrace within its ambit Hindus, Muslims, Christians, Parsis or persons professing any other faith.

During the general discussion of this Bill some good points were made by my hon. Friends Dr. Tek Chand and Pandit Thakur Das Bhargava. They said that this Bill would operate in a great measure as a hardship on various sections of the Hindu community, among whom marriage and divorce laws are easy. In some parts of the Punjab and elsewhere, it was pointed, marriages can be easily performed. Why should they be deprived of this easy manner of their marriages?

Dr. Deshmukh (Madhya Pradesh) : Easy marriage, easy divorce !

Shri J. R. Kapoor: In the matter of divorce they have easy laws in various parts of the country, among various sections of the people. Why should those laws be made more difficult? On the one hand the contention of some was that marriage and divorce laws were made more and more strict by the Code and on the other, the contention of others was why should these marriage and divorce laws be enforced on persons who did not believe in them. My submission therefore is that this Code in whatever form it is passed, should not be forced on any particular section of the Hindu community, or the Sikhs or Jains. It should be left open to them to be governed by it or not. Secondly, some of the provisions of this Code—particularly those relating to monogamy and divorce, with which I am in entire agreement and would like them to be made a little more liberal—are so good that I see no reason why the Muslims should not be entitled to have the advantage thereof.

My hon. Friends Shri Sarwate and Shri Indra have moved their amendments. Particularly the amendment of Shri Indra wants that the whole

Code should be compulsorily made applicable to the Muslims. I do not want that it should be so enforced on Muslims just as I do not want that it should be obligatory on every Hindu to be governed by this Code. I want that it should be open to a Hindu, Muslim, Parsi or for the matter of that any person professing any other religion hereto or hereafter, in fact it should be open to every citizen of India either to be governed by the Code or not.

Dr. Ambedkar: Great liberal !

Shri J. R. Kapoor: Not only that, I want that it should be open to anybody to pick and choose various parts of the Code. I am making this statement with all seriousness, because of this reason. There are various clauses in this Bill, which should be readily acceptable to some, but not to others, similarly there are other clauses, which may be acceptable to others but not to all.

Pandit Thakur Das Bhargava: Does my hon. Friend contend that the choice of the person should be per clause?

Shri J. R. Kapoor: Not per clause but various important parts of the Code. When I made that suggestion I knew that it may require the legal intelligence of Dr. Ambedkar as also Pandit Bhargava and other legal luminaries to amend the various sections of the Code so as to make them fall in line with my amendment. I am sure that this task is not beyond the capacity of Dr. Ambedkar or Pandit Bhargava or other legal luminaries. Speaking for myself I am particularly in favour of the clause relating to monogamy and divorce. But there are other clauses, which I would not like to adopt. I would therefore like to have the liberty of making a declaration to the fact that so far as I am concerned I would like to be governed by the clauses relating to monogamy and divorce and not others. I would beg of this house very seriously to consider the suggestion. Firstly, that this enactment should be applicable to the entire nation, secondly, it should be open to anyone to say by declaration that he wants to be governed by this Code and thirdly, it should be open to him to say also that he wants to be governed by this or that chapter.

Dr. Deshmukh: If the husband and wife differ on the issue of say divorce, who will decide?

The Minister of Works, Production and Supply (Shri Gadgil): The child will decide.

Mr. Speaker: Let the hon. Member proceed.

Shri J. R. Kapoor: If the husband and wife differ on the divorce issue I am prepared to give the choice to the wife, if thereby I can secure the support of the lady Members here. If my suggestion is accepted, of course the various provisions of the Bill will have to be recast. It is a matter of principle. Once the principle is accepted—namely that we should have one uniform law for the whole country, secondly that we should give the liberty to every citizen to say whether he wants to be governed by the Code or not and thirdly, the liberty to pick and choose various aspects of the Code—proper amendments could of course be drafted. I know how difficult it is but difficult as it is certainly it is

much easier than the task of getting this Bill passed by this House and, certainly it is easier than to get the support of the entire nation for this Bill as it is, compulsorily enforceable among the Hindus, Sikhs, Jains and Buddhists.

Therefore, I submit that my suggestion should be very seriously considered. I hope and trust that if we consider it coolly, calmly, dispassionately and without any prejudice either for or against it, certainly we shall be able to come to an agreed solution and perhaps within five or seven days we may be able to pass this controversial measure. It will satisfy everybody. It will satisfy those who want to have a uniform Code. It will satisfy the orthodox Hindus because it will not be necessary to enforce the Code on them; it will be open to them to be governed by it or not. It will satisfy those reformers also who want to have legislation on these lines because it will enable them to declare that they want to be governed by this legislation. It will therefore satisfy everybody and offend nobody. With these submissions I commend my amendment for the acceptance of the House.

My alternative amendment is also on the same lines but it restricts the operation of the Code to Hindus only. According to my first amendment, I want that the whole Code, in whatever form it may be passed, should be applicable to the entire nation, subject to the condition that it will be applicable only to those who declare that they want to be governed by it. If, however, that suggestion is not acceptable for any reason then I submit in my second amendment that the Code should be applicable to the Hindus, Sikhs and Jains as has been provided but that there also it should be applicable only to such Hindus, Jains, Sikhs and Buddhists who by declaration state they want to be governed by it.

Dr. Deshmukh: I have two points to make so far as these amendments are concerned. There are various amendments that have been moved but I should first wish to speak on the amendment of Mr. Sarwate and then on the amendment moved by the Hon. Dr. Ambedkar. I feel inclined to support the amendment of Mr. Sarwate on constitutional basis, and I feel that he has certainly brought forward an amendment, which advances the cause of the Constitution, in case it is accepted that it requires advancement. I personally think it does since there is a section of Members of this House who do not regard very seriously what we have embodied in the Constitution. I would beg of you to give me a few minutes to refer to article 44, which reads:

" The State shall endeavour to secure for the citizens a uniform civil Code throughout the territory of India ".

Now, this is an article from the Directive Principles of State Policy. Although it is not contemplated that any decision of government could be set aside by the Supreme Court or could be regarded as illegal and against law on this score, I don't know whether it would be competent for the Supreme Court to give a ruling. But if we attach any value or wish to give any serious consideration to the Directive Principles of State Policy in the Constitution, I

am unable to see how by passing this Code we would be endeavouring to secure for the citizens a uniform Civil Code throughout the territory of India. What we would be doing by this Code would be entirely and directly contrary to what is laid down in Article 14. Because this is not only not endeavouring to secure for the citizens a uniform Civil Code but trying to enact a different Code for a section of the people. So, before we go ahead, before we waste any more time, we should consider this point. And I am sure we are doing nothing else but wasting time because for the next three days I am certain it would not be easy to go much further than Clause 2 and we don't know how long after that we would be touching the Hindu Code. A suggestion has already been made that it would have been far better, if we really wanted to pass this Code, that one whole session should have been devoted to it. To allot three days during which it would not be possible to advance very far I consider, a pure waste of time, energy and money of this House. It can serve only one purpose and that of merely satisfying the whims and fancies or dogged determination or inclination of certain people. It would be quite easy when we have got a couple of thousand people obstructing our way or shouting slogans to desist Members of this House from passing this Code, to find one or two persons who would like to go to the law courts to get a ruling that what we are trying to do is not only not in keeping with the constitutional provisions but is directly opposed to what has been laid down.

Shrimati Durgabai: Others also will go to courts.

Dr. Deshmukh: Both sides will be there. You will get a notice at the cost of those people who go there first.

Shrimati Durgabai : Others will be there on the basis of provisions regarding discrimination.

Dr. Deshmukh : Yes, there is discrimination everywhere and that is exactly the objection that is raised. If we enact this Code as it is, there will be discrimination in favour of certain people and against certain others who are also handicapped similarly, if not worse. That is a point, which goes in our favour.

My second point on these amendments is that I am opposed to the amendment moved by Dr. Ambedkar. By his amendment No. 15 in the printed list, he wants the substitution of the words " persons who are Hindus by religion " for the words " Hindus, that is to say, to all persons professing the Hindu religion ". It is very difficult to find out which version really holds the ground at the present moment when there have been so many revisions and such a huge lot of amendments have been moved. It is not easy to know where exactly we stand. I don't see what is wrong with the original provision contained in the Code as it emerged from the Select Committee. The wording there is:

" 2 (a) This Code applies to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments. "

In his amendment Dr. Ambedkar proposes the substitution of these words by " persons who are Hindus by religion ". I don't see any difference between the two wordings. By the words " all Hindus " you refer to all people who are " Hindus by religion ". The original wording further explains the words " all Hindus " by saying it means " all persons professing the Hindu religion ". Thereby the Code will apply to any person who claims to be a Hindu. These words are now sought to be substituted. No reasons have so far been given as to why they are going to be substituted by new words. If they are actually omitted, and if Dr. Ambedkar can persuade the House to omit those words, I think a very real difficulty may arise. If you eliminate " professing " how are you going to define who is a Hindu and who is not a Hindu. The words proposed are " all persons who are Hindus by religion ". But how do we know who is a Hindu by religion and who is not ? Is it proposed that every person would be required to make a declaration ? I don't know what procedure is suggested and how it would be ascertained if a particular person is a Hindu or not. I would say that the words as they stood in the original Code as it emerged out of the Select Committee have stood the test of time. So far as my recollection goes, these words are there in Mulla's *Hindu Code* and these words have been used from very old times. They have a sanction of long usage.

In view of that there is, in my opinion, no need for this amendment and I would suggest that it should not be accepted. I support the amendment moved by my hon. friend Shri Sarwate on the ground that if we accept it, we would be acting in the spirit of the Constitution. Otherwise all our efforts are liable to be fruitless in view of the constitutional difficulty I have pointed out.

Shri Syamnandan Sabaya (Bihar): May I make a submission in this connection ? There are several amendments moved formally by the authors, but the movers have not made any speech explaining their viewpoint. One of such amendment is from the Hon. the Law Minister himself. Such of us who have not moved any amendment to this clause and have an open mind would like to hear the Government point of view as also the point of view of the movers of the other amendments in order to enable us either to take part in the deliberations or to decide how to act in the circumstances. May I therefore suggest that movers of the amendments should first make their speeches and then the clause should be thrown open for general discussion. This would help the discussion and the decision. In any case, we would like to hear the Hon. the Law Minister's viewpoint on his amendment, so that we may either support him or oppose him.

Mr. Speaker : I was thinking of calling upon the movers of the amendments one by one, but I found that instead of the movers who did not appear anxious to catch my eye others caught my eyes. That is why I called upon others.

Dr. Ambedkar: The movers have sat back. In fact, I am myself waiting to

hear them.

Mr. Speaker: The Hon. the Law Minister is at liberty to choose his own time but I did call upon him now because I thought that if he participated a little later it would be possible for him to clear the ground.

Dr. Ambedkar: I can speak at any time.

Mr. Speaker: He will be entitled to two speeches; that is to say, even if he participates in the debate now, he will be entitled to reply.

Shri Syamnandan Sahay: He may reply to the general debate on the clause, but as regards his own amendment he must satisfy the House that there is some reason for moving that amendment on behalf of Government.

Mr. Speaker: I think his position stands a little differently. He has to take into consideration what others say and then he will be able to explain his viewpoint better. That is why I was thinking of calling upon him at a later stage, though not at the end.

Sardar Hukam Singh: I do not know how the impression has got into your mind that the movers of the amendment do not want to speak on their amendments.

Mr. Speaker : I never said ' they never wanted to speak '. I said they did not try to catch my eye. In between, Dr. Deshmukh got up and I called on him to speak. Several Hon. Members : *rose*—

Mr. Speaker : I am not sure whether I should call Pandit Bhargava at this stage—for personal reasons. Mr. Jhunjunwala.

Shri Jhunjunwala: Sir, I have given notice of two alternative amendments. One of my amendments reads thus:

"This Code applies to all citizens of India, that is Bharat, irrespective of their caste, creed, and irrespective of their belonging to or professing any religion ". Alternatively, I have moved another amendment which reads thus :

" Provided, however, that notwithstanding anything contained in the above clauses, this Code shall not apply to any person unless such person got his name registered with such authority and in such manner as may be hereafter prescribed by Parliament, within one year after this Code comes into force, and in case of a minor within one year after such a minor attains majority."

I want to assure the House that these amendments of mine are not dilatory; nor am I opposed to all the provisions of this Code. The main object in moving my first amendment is that, as has been pointed out by my hon. Friend Mr. Naziruddin Ahmad, we have been passing many laws, which are being declared *ultra virus* either by the High Courts or by the Supreme Court. It is therefore very necessary that before we take any such Bill, Act or legislation into consideration we should make sure that we are acting according to the Constitution. If we pass any law and ultimately that law is declared *ultra virus*, it will be a mere waste of the time of this House and also waste of so much money. It will serve no useful purpose. Under article 15 of the Constitution it is laid down that the State shall not discriminate against any citizen only on

ground of religion, race, caste, sex, place of birth or any of them. The amendment that I have moved makes this Code applicable to all citizens of India, that is, Bharat, whereas the clause as it stands is restricted only to a particular class of persons. If the law that we are passing is for the good it is good for all people. It is not right that we should discriminate one particular community against another. We should not discriminate one set of persons who are professing one religion from another set of persons who are professing another religion if our law is for their good. If it is not for their good, then it is not right that we should thrust 'any law or enactment upon a particular community or caste which is professing a particular religion.

One of the points which I wanted to make out was this : the House should see whether this Bill is one which Parliament can make, especially as it is restricted to a particular kind of persons professing a particular kind of religion. We can have such a law under Article 25 of the Constitution. Now let us see what are the provisions in article 25 which entitle us to take up such legislation. Article 25(1) reads:

" Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

Clause 2 of the Bill relating to the Application of the Code reads: " (1) This Code applies—

(a) to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Virashaivas or Lingayats and members of the Brahmo, the Prarthana, or the Arya Samaj;

(b) to any person who is a Buddhist, Jaina or Sikh by religion ;

(c) (i) to any child, legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section; (ii) to any child, legitimate or illegitimate one of whose parents is a Hindu within the meaning of this section; provided that such child is brought up as a member of the community, group or family to which such parent belongs or belonged; and

(d) to a convert to the Hindu religion. (2) This Code also applies to any person, who is not a Muslim, Christian, Parsi or Jew by religion:

Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code has not been passed, then, this Code shall not apply to that person in respect of those matters;

(3) The expression " Hindu " in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code ;

(4) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to all Hindus whose marriages have been solemnized under the provisions of that Act prior to the commencement of this Code. "

I have not been able to understand why this Code is being enacted only for the Hindus, if the right has been given—as has been done under article 25—that " subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. " If this right has been given to the Hindus and persons professing other religions, I do not see any reason why it is sought to be taken away from Hindus by enactment of such laws, such as the one now before us. I would ask the Law Minister whether he is not encroaching on the rights of Hindus of their religious liberty sanctioned by the Constitution. Clause (2) of article 25, however says that:

" Nothing in this article shall effect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

But if this piece of legislation which is now under discussion is being enacted as a measure of social reform and for the welfare of the people, in that case I cannot understand why it should be confined to persons professing particular religions and not extended to all.

Shri Raj Bahadur: May I raise a point of order. Sir. Three or four hon. Members of this House have raised the point that the scope or application of this piece of legislation should be extended to all the citizens of India. In the course of the first reading of the Bill the house has already committed itself to the principle that the Bill shall apply only to the Hindus. Having accepted this principle, is it now open to Members to take up this point anew and afresh?

Mr. Speaker: The point of order practically comes to this—I am stating it in my own way. Briefly stated it would be as to whether some of the amendments which seek to extend the application of this Code to communities other than those included in the Bill is not tantamount to an extension of the scope of the Bill—is that the point of order?

Shri Raj Bahadur: The House had agreed that this Code shall apply to one section of the Indian people along with the others. Can we now take a new decision that it shall apply to all ?

Mr. Speaker: It comes to the same thing. The objection is that the scope of the Bill is being extended now—that is the point of objection. Personally, I myself was feeling doubtful about the admissibility of certain amendments which are now proposed and which apparently seek to extend the scope of the Bill but I have not come to any conclusion. I should first hear Members and then decide at the end as to whether I should put the amendments to vote or not.

Dr. P. S. Deshmukh: It is quite open to the House to extend the limit the

scope of any legislation. So long as any particular clause is not passed by the House, it is completely at liberty to do that. Supposing the original Bill says that the Code will apply to the whole of India and the House proposes an amendment by which it excludes certain States or *vice versa* ? I feel certain the House is quite competent to do so.

Mr. Speaker: The extension of the Act to the whole of India and then limiting it to a part of India would not be an extension of the principle of the Act. The principle of the Act is something of substantive law, which extends not territorially but in other respects. It is perfectly competent, *prima facie*, to say that it shall not apply to Sikhs, Jains or Buddhists; but the point is whether it is competent now to say that it shall apply to Christians, Muslims, Parsis and Jews.

Shri Syamnandan Sahaya : There are two submissions I wish to make. Before you give a ruling I would request you to give us a little chance.

Mr. Speaker: I shall give members every chance.

4. p. m.

Khwaja Inait Ullah (Bihar) : Are these amendments which are being moved directed to bring in Muslims also within the scope of the Hindu Code and directed against our Fundamental Rights under article 25 of the Constitution ?

Mr. Speaker : That does not arise. It is a part of the wider question again as to whether the Code itself goes against the spirit of the Constitution.

Khwaja Inait Ullah : It is clear.....

Mr. Speaker : It may be clear to the hon. Member, but it is not so clear to me. Therefore, let us hear what the hon. Members have to say and then coolly consider. There is no use going on presuppositions. After all it is a matter, which affects vitally large sections of people. The question is whether it offends against the provisions of the Constitution.

Shri J. R. Kapoor: Before you are pleased to give a ruling on this question as to whether these amendments are or not in order, may I request you to give us an opportunity to speak on that particular point, because so far none of us have expressed ourselves about the admissibility of these amendments?

Mr. Speaker: I think I shall give them an opportunity. But first of all I want to hear what they really mean and whether they are trying to extend the scope of the Bill. I shall give them a hearing.

Shri Jhunjunwala: I was pointing out to the House that if a particular kind of legislation is one of reform or is in the interests of public good, then this Parliament will not be partial in enacting such a kind of legislation.

[PANDIT THAKUR DAS BHARGAVA IN THE CHAIR.]

When a particular kind of legislation is being enacted for the welfare of the people why should it be restricted wholly to a certain class of persons and why should it not be extended to all ? If it is good, it is good; if it is bad, it is bad. And if it is bad why should we apply it to the Hindus ? Why should we thrust it upon the Hindus ? Why should they not be left free to practise their own religion and act according to their own ancient ideas ? It is said that this Bill is being enacted because the present system of marriage and other things are not in the interest of society, that they are spoiling society and that this particular kind of legislation is good for the society. If a particular kind of legislation may be regarding marriage, may be regarding inheritance, may be regarding anything, I do not want to go into those details which I shall do when the particular clauses come—but if, as I have said, particular things are good for certain persons. I would like to have the reasons from my hon. friend Dr. Ambedkar who is described as Manu of modern age as to why the particular piece of legislation is bad for Muslims, because he is excluding them, he is purposely excluding them by saying that this Code shall not apply to Muslims. I would like to know why it should not apply to everybody and why it should apply only to Hindus. If it is good it should apply to you, me and everybody. And secondly, as I said, if it is a bad law, why should it be thrust upon a particular class of persons? Lastly, when the question comes up whether these amendments are admissible or not, just as my friend Mr. Jaspat Roy Kapoor has said, I would request that we should be given an opportunity to explain our position.

Shri Naziruddin Ahmad: Sir, as regards the amendment moved by the Hon. Dr. Ambedkar, I raised at that time a point of order. I should first of all try to explain my point of order, because the other amendments depend upon that point of order. You will be pleased to notice that this amendment is drafted in a language, which is highly insulting to the House. It says " In clause 2, in sub-clause (1), in item (a), for " Hindus, that is to say, to all persons professing the Hindu religion " *substitute* ' persons who are Hindus ' and so on and so forth. In the next item the wording is " substitute " something. In part (2) it is again " omit " something. This is expressed in the imperative form. As Dr. Patabhi on one occasion said. Dr. Ambedkar speaks in a professorial and dictatorial tone. This amendment is couched in that language. Not merely this, but all the amendments. I have examined one and all of them. They are in the form of correction slips, or orders by a superior officer of Government to his subordinates. So this is really a direction to the House to do this and that, imperatively. The usual form is that " for such and such thing the following shall be substituted " or that " the following shall be omitted ". That is the form. I submit that the drafting has been done so carelessly and so much in the official style that they cannot be accepted as setting a new standard of courtesy to the House. All the amendments are couched in that language. I seriously ask the House to consider whether this

method of wording the amendments will be acceptable at all. I, therefore, like in some of the amendments to cure this imperious form. I have suggested the usual form. And it is not merely the usual form in this House but in the previous House and in all other legislative bodies. The question is whether we should permit the setting up of a new standard entirely its own. You will be pleased to examine all the amendments and they are all couched like this. The point of order, which I submit, is whether it is in good form. If it is not, then the next amendment, which I have submitted to cure this, should be accepted in preference to this. Nothing will be lost but everything will be gained in decorum and official form. Sir, I ask you to give a ruling on this point.

Mr. Chairman: I am not impressed by the speech of the hon. Member in regard to the facts to conclude that any point of order regarding my ruling has been made out. He was making certain observations to which the Hon. Dr. Ambedkar will in time reply. Therefore there is no point for ruling.

Shri Naziruddin Ahmad: The two other amendments which I suggested depended upon the rejection of the form or otherwise of the amendments. That is why I want a ruling from you. If it is in good form, of course, we shall also indulge in such forms and the House can also be allowed to degenerate to that sort of form.

Then with regard to clause 2, one important point has been raised by the several amendments and supported by several hon. Members. It is that the Code should be made applicable to all persons in India. I was asked to sponsor this idea and when I raised the point of order, I did nothing of the sort at all, but my point is that the Bill is bad for the Hindus and when it is bad, this bad law should not be made applicable to all. A bad law cannot be made good by making it applicable to all. If it is bad for the Hindus, it should be rejected. The point I was driving at was...

Shri J. R. Kapoor: The fate should be shared equally by all the Hindus and non-Hindus alike.

Shri Naziruddin Ahmad: That is a form of logic which amounts to a joke and is certainly acceptable but seriously in a legislature this cannot be accepted. If a law is bad, it should not be extended to put pressure on those on whom it is going to be applied. Constitutionally this law will bring degradation. This point has been seriously raised outside the House; it has been freely talked about and it is more than certain that this law could not be taken before a court of law. We have passed several principles in the Constitution. We have worded the clauses in the Constitution in a general way with the result that they have landed us already into difficulties. The Constitution stands in the way of this Bill being passed.

Shri Tyagi: We will change the Constitution.

Shri Naziruddin Ahmad: My learned friend says if the Constitution is badly drafted and has landed us into difficulties, why not change the Constitution. I

ask why should it be that you are at liberty to pass a law for the Hindus ? Why should there be a policy of distinction followed between Hindus and Muslims in their own domestic sphere ? I think it is not logic. It is not good. The Hindus should remain Hindus at home and they should be Hindus in their religious practices. Similarly the Christians and Muslims should have their freedom of thought, worship and religion which has been granted in another part of the Constitution. I ask the House to consider whether in view of the number of defects noticed in the Constitution, it requires revision. I think it is easier within two years of the passing of the Constitution to amend it than it would be after two years. So it is time for us to amend the Constitution to make it possible to pass a good law affecting the Hindus. So far as religious and semi-religious matters are concerned the law could not interfere and at least it should not be dictated from the top. This is a kind of dictatorship which does persist in democratic society.

Shri Tyagi : Marriage and divorce do not come under religion.

Shri Naziruddin Ahmad : I believe the Hindu marriage is one of the *Samskaras* ; it is the tenth *Samskara*; it is part of their religion and it is idle to argue that it is not part of their religion. I say you may abolish religion and the law gives you freedom and this House is a sovereign House within the Constitution. You can abolish religion, if you like but will you go so far as that? So far as this is concerned. I do not want to pursue it further but then look at the condition in which we exist today. We have no food. We had to spend Rs. 200 crores for importing food from foreign countries and to make us live for this year. (*Interruption*). We have no clothes. There are no shelters for many of our countrymen; we cannot give primary education at all but what we give is a free gift to the Hindus in the shape of the Hindu Code. If you want to make them happy, you must give them food, give them education.

The Deputy Minister of Communications (Shri Khurshed Lal): This might have been a very good argument on the motion for taking the Bill into consideration. We are now considering a specific clause.

Mr. Chairman: I was waiting to hear the last words of his concluding remarks to know the inference he proposed to draw from his preceding observations.

Shri Tyagi: I want to know how is it that a Muslim is quoting our scriptures.

Shri Naziruddin Ahmad : We should not think of this Code but we should think of more and more constructive things which would make the people happy, give them elementary education etc. In these dangerous times there is the other danger of the world situation deteriorating. War is approaching India step by step.

Mr. Chairman: I am very sorry. I do not want to interfere but I think the hon. Member is at sea on his arguments. He ought to proceed with his amendments.

Shri Naziruddin Ahmad: I was only submitting that this is not the proper

time to go on with this Bill.

Shri Khurshed Lal: We are not discussing the consideration motion.

Mr. Chairman: I will ask the hon. Member to speak on his amendments. If he wants to say that so far as the particular amendments of Dr. Ambedkar are concerned, they are not right, I would certainly allow that but if he goes on to say that this Bill should not be proceeded with, I think it is beyond the province of any hon. Member at this stage to say so.

Shri Naziruddin Ahmad : I was encouraged to make this suggestion only for one reason that it is understood that Government has decided to proceed with this Bill only for two or three days.....

Mr. Chairman: I would ask the hon. Member to proceed with his amendments.

Shri Naziruddin Ahmad: (*Interruption*) I rather think that many hon. Members have nothing to think of except interrupting . Sir, there are a number of amendments standing to my credit and I shall deal with them one by one. The first two amendments Nos. 16 and 17 were suggested to improve the form in which Dr. Ambedkar's motion has been tabled. They do not deal with any other principle except improving the form. Then, I come to amendment No. 19.

In part (c) (i) of sub-clause (1) of clause 2, after "Illegitimate" insert:

"who, if he has attained the age of eighteen years, is himself a Hindu and "

I am sorry that a very large number of widely divergent subjects have had to be moved separately, and have to be argued upon in a lot. That is why some hon. Members seem to lose thread of the argument. Sub-clause (1), which I seek to amend, reads thus:

" This Code applies—

(c) (i) to any child legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section."

Shri Satish Chandra (Uttar Pradesh) : This has been read several times.

Mr. Chairman: Let the hon. Member proceed. To keep up the thread of the argument, he must be allowed to read.

Shri Tyagi: This thing about illegitimate child was not read.

Shri Naziruddin Ahmad: The child of a Hindu, particularly, if he be illegitimate, may not himself remain a Hindu. This sub-clause proceeds on the supposition that a child of a Hindu remains a Hindu. But, it is quite possible for him to change his religion. He may discard all religions ; he may be an atheist. He may become a Jew, a Christian or a Muslim, and then again be re-converted to Hinduism. The supposition that an illegitimate child of a Hindu is a Hindu presupposes that he does not change. As a matter of fact, he can change. If he changes his religion, certainly, he cannot be a Hindu, and cannot inherit his father's property and so forth. An illegitimate child of a Hindu father will inherit his fathers properties ; but if he changes his religion, he ceases to be a Hindu and therefore, he ceases to be the heir.

Shri Tyagi : A father can never have an illegitimate child; a mother only can have.

Shri Naziruddin Ahmad : That is a legal question. If a father cannot have an illegitimate child, this clause should have been deleted.

Shri Tyagi: The child is..... (*Interruption*).

Mr. Chairman: Order, order; let him proceed.

Shri Naziruddin Ahmad : My amendment says, " if he has attained the age of eighteen years, is himself a Hindu....." That is to say, after attaining the age of eighteen years, when he attains the age of discretion and is permitted by law to act in a legal manner, if he remains a Hindu, then, of course, he is a Hindu. He is a child of his father entitled to inherit and enjoy all the benefits of the Hindu Law. This amendment tries to remove a lacuna, which exists in the drafting. An illegitimate child, if he attains the age of eighteen years and if he does not change his religion, then, of course, he could come in. That is what I have sought to clarify here.

Let us come to another amendment; it is of a drafting nature. It reads as follows:

In part (c)(i) of sub-clause (1) of clause 2, for" whose parents are Hindus " substitute " whose parents are or have been Hindus ".

It may be that the parents of a child are Hindus; but they may change their religion. So, I want that in order to have this relationship.....

Shri K. C. Sharma (Uttar Pradesh): May I draw the attention of the chairman to the convention of the House that all drafting amendments be left to the draftmen and the time of the House be not wasted ?

Mr. Chairman: There is no such absolute convention; it all depends on the particular amendment.

Shri Naziruddin Ahmad : This only shows that the hon. Member is not listening to the arguments, but is only trying to find and create objections. Although this is more of drafting nature, I think it involves a substantial thing. The question is this. You say that a child, legitimate or illegitimate of a Hindu, is a Hindu. Supposing the father changes his religion in that case, he is not a Hindu at the relevant time when the question arises. I therefore want to make it clear that he is a Hindu or has been a Hindu. It may be that a father was not a Hindu, but has accepted the Hindu religion at the relevant time. If you say, a man who is a Hindu, it means, who is a Hindu for the time being; he might not have been a Hindu before. That is why I am saying: " a person who is or has been a Hindu "; who has been a Hindu all along. The child of such a parent would be a Hindu. Suppose there is a Muslim who adopts the Hindu religion today. The question of the status of his child comes into question. Could his child, who was born at a time when the parents were Muslims, be a Hindu today because today the father is a Hindu ? That is why I have tried to change the clause. Though it is of a drafting nature, it has substantial effects. I submit that these small points require careful consideration. The question, in

effect, is, if a man is converted to Hinduism today, whether his child, who may be a Christian, or a Muslim or a Jew according to the religion of his father before his conversion, would be a Hindu. This is a serious constitutional question, and I hope the House will seriously consider that. But, the difficulty would be for the Hon. Law Minister to carefully listen to these points and to reply to them, and for the House to follow all these arguments and replies. As a matter of fact Dr. Ambedkar will say, " I oppose all the amendments " and the House will say, " We respectfully agree " .

Several Hon. Members: Never, never.

Shri Naziruddin Ahmad: My next amendment. No. 21, I would repeat my argument, enforces a condition that a man, whose religion is in question, is a Hindu if he is a Hindu after attaining the age of eighteen years; because at the age of eighteen, he is entitled to act in a legal manner, and if he has attained the age of eighteen years, he may change his religion. Therefore, the option of a boy, on attaining the age of eighteen years, to change his religion, is provided for. That contingency has not been thought of by the draftsmen. Therefore, I am submitting this amendment for the consideration of the House.

I now come to my next amendment No. 23. It runs thus: For part (d) of sub-clause (1) of clause 2, substitute:

" (d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion."

You say that a convert to a Hindu religion would be a Hindu. It is plain common-sense that a man has freedom of conscience and religion and he would be fully entitled to convert himself to Hinduism. But, what happens to his rights and liabilities before he is converted? I will explain the position. A Christian, a married man, is converted today to the Hindu religion. What happens to his wife? Would the wife be automatically divorced because she is not a Hindu? A marriage between a Hindu and a Christian would be illegal. I agree that a convert to the Hindu religion should be treated as a Hindu. But, what about his rights and liabilities before conversion? There are numerous rights and liabilities. I do not wish to detain the House by detailing the various considerations, which may arise on account of this. I simply put it generally that a convert should be a Hindu, subject to all the rights and liabilities he had before the conversion. Suppose there was a non-Hindu possessing rich property, and suppose he is converted to Hinduism. Should you ask him to lose all his property? If he is to inherit from some one, before conversion, should he lose this inheritance after his conversion. There are laws relevant to this which occur to me, but I only submit that we should preserve all the rights and liabilities acquired by the man who is converted, before his conversion. The *status quo* of the rights previously acquired should not be disturbed. All those rights should not be lost simply by the conversion. Rights once acquired should not be allowed to be lost.

Liabilities incurred should not be allowed to vanish, all because of a later conversion. The conversion should not affect past transactions, past rights and past liabilities.

Then, my next amendment is that sub-clause (2) of clause 2 should be omitted. This sub-clause is to this effect:

" This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion. "

This sub-clause, I submit, is based on erroneous considerations, and on erroneous analogies. In part (a) we have said that this Code applies :

" to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, ... "

And we also say that it applies: " to any person who is a Buddhist, Jaina or Sikh by religion."

But the Sikhs, I feel, do not very much appreciate the conferring of the so-called benefits of this Code on them. My friend Sardar Hukam Singh is ready to give up the so-called benefits of the Hindu Code now being conferred upon the Sikhs. So long as he remains a Sikh, I do not think he would very much appreciate the Hindu Code being applied to him and.....

Shri Tyagi: He can become a Hindu.

Shri Naziruddin Ahmad : But let Sardar Hukam Singh speak for his own community. I am only.....

Shri Khurshed Lal: Yes, you are speaking for yours.

Shri Naziruddin Ahmad : Then we come to part (c)(l) which says that the Code applies to any child, legitimate or illegitimate etc. A Hindu is a Hindu and the child of a Hindu should also be a Hindu. But what I say is this. Sub-clause (2) seems to be somewhat misplaced, because it states that the Code applies also to any other person who is not a Muslim, Christian, Parsi or Jew by religion. Looking at it from the drafting point of view, this is a circuitous way of drafting the thing, and it shows the piece-meal introduction of an idea. If this is the idea, why not say straight away that all persons who are not Muslims, Christians, Parsis or Jews are Hindus ? Instead of doing that, you first of all say that Hindus are first of all Hindus. Then you say that Buddhists, Jains and Sikhs are Hindus and then you say that the Code will apply to other persons who are not Muslims, Christians, Parsis or Jews. I think the most straightforward and logical way of putting this definition would have been to say that all persons who are not Muslims, Christians, Parsis or Jews are Hindus. It comes to that. Therefore, I submit, at that time, there might have been some hesitation in the mind of the draftsmen and this idea was introduced at a later stage. Otherwise there was nothing to prevent them from saying what they actually meant.

But there is a snag in this clause 2, sub-clause (2). Does it necessarily follow that a man who is not a Muslim, Christian, Parsi or Jew is a Hindu ? He may be a communist, as is suggested by a friend here. Or he may belong to

the religion of *Shintoism* as professed in Japan. Or he may have no religion at all. How can it be accepted as an inexorable principle that a man must be a Christian, Parsi, Muslim, Jew or a Hindu ? There may be a person who belongs to no religion, or there may be a person whose religion is apart from any of these great religions.

Shri Tyagi: Hinduism is a cocktail of all religions.

Shri Naziruddin Ahmad: Of course, to say that all the rest belong to the Hindu religion may sound very sweet to Hindu ears. But the question is whether we should force the so-called benefits of this Code on anybody? Should we call anyone a Hindu and force the Code on him? That is the point. Suppose there are some foreigners here, or their servants or subordinates or friends. We are encouraging tourist traffic and we can expect many such persons in India. And suppose one such foreigner dies while in India. Who will inherit his wealth?

Dr. Ambedkar: You will inherit his wealth if he dies in India.

Shri Naziruddin Ahmad : The question is, are those persons who do not belong to any of those religions to be the victims upon whom the so called benefits of this Hindu Code should be forced ? The Hindu community is docile and in an absolute minority in the House, but outside there is a great deal of objection raised and that being the case, should these so-called benefits be forced on all ? Should you force the Code upon all the persons who are neither Muslims, Christians, Parsis or Jews, and because they do not belong to any of these religions, does it necessarily follow that they belong to the Hindu religion ? Should the Code be applied to them ? That is the question which the House will have to answer. I submit that this subclause (2) must be omitted because it seeks to enact a proposition which should not be accepted. Let us proceed gradually. You must not force the Code upon such persons. There may be some who follow some other religion or who have no religion at all, or a new religion may come into the world and to them the law should not be made applicable. The application of the law should be gradual. The impact of this tremendous measure should be gradual. In fact I was very much enamoured with part of the amendment moved by my hon. friend Mr. Kapoor. There was a great deal of sense in that part of the amendment which said that the Code should apply only to those persons who want it. That was also the purport of the amendment of Shri Jhunjhunwala. Of course there were some differences with regard to detail. But the important principle is that the Code should apply only to those who want it to be applied to them. Therefore this definition of a Hindu is not warranted. If the Hindu Code was not a controversial one and had been an acceptable one to all there would have been no difficulty. So by accepting that part of the amendment.....

Pandit Krishna Chandra Sharma (Uttar Pradesh): It means that everybody should be allowed to make a law for himself.

Shri Naziruddin Ahmad: You are trying to force down the throat of a person

a medicine which he does not like. However good the Code may be you cannot force it down the throat of the Hindu community.

An Hon. Member: Who says that? We all want it.

Shri Naziruddin Ahmad: First of all you must take public opinion on your side. You must approach them gradually. Make it first optional and then the law is good for everybody they will gravitate towards it. They will themselves push each other and compete with each other in getting themselves earliest. The law should attract people voluntarily and not by force. That is the great principle, which underlies these amendments and suggestions. It is not a case of everybody making a law for himself but a case of a few persons forcing the law upon 33 crores of people...

An Hon. Member: Who are you to say that?

Shri Syamnandan Sahaya: That is also lately the correct position. Go ahead. Let them shout at the top of their voice.

Mr. Chairman: Hon. members should not go on speaking to each other while sitting. It will create confusion. Let the hon. Member proceed.

Shri Naziruddin Ahmad: That is why I heartily support the suggestion to make the application of the Code voluntary thereby robbing it of its sting. Then I dare say that if the law is good gradually every one will come to it. I therefore submit that the law should be made applicable to those who are fit for it.

India is a vast sub-continent where there are highly advanced people as also extremely backward people. The law is a good law to hon. Members because it is good to the community from which most of the Members come. It is an advanced law suited to the advanced community from which hon. Members come. But why should it be made applicable to hill tribes, aboriginals and backward people who have no education and who do not even have two meals a day. Why should it be made applicable to them by a stroke of the pen against their wishes? That is the point which arises out of the suggestions contained in these two amendments. It is experience and not logic that should guide law. I therefore submit that the law should be made applicable to those who accept it and those who are fit for it. Gradually those who are semi-fit for it will qualify for it.....

Shri Khurshed Lal: That is why it is not being applied to you.

Shri Naziruddin Ahmad: I agree that I am too backward to appreciate the benefits of this law. This law is a jumble. It does not contain much of the Hindu law. It is borrowed from the Muslim law, from the Christian law and borrowed all the worst elements of those laws. Therefore I would prefer to be called a backward man so as to please my hon. friend Mr. Kurshed Lal rather than be looked upon as civilised and be made to accept a law which is not applicable to me and which does not appeal to me either. The great difficulty is that the Government is committed to a principle rather prematurely and the people outside are against it.....

Shri Bharati: Who are you to say that? Who said that?

Shri Naziruddin Ahmad: Just go out and see. If you had gone to the Gandhi Grounds yesterday you would have seen something of that.

An hon. Member: Why did my hon. friend go there?

Shri Naziruddin Ahmad: It is my business to be informed: not to suggest anything to them, not to control, guide nor mislead them. It is for me as a Member to ascertain public opinion. If I know that Hindu opinion moves in a particular way, even at the risk of being called backward I would bring it to the notice of the House. There is no point in trying to be fashionable and clever at the cost of common-sense and equity.

Some hon. Members asked me in an oblique manner, " Who says so ?". They think that the Hindu community has accepted the Code and are agreeable to it. I come from Bengal. At the request of the Government of their opinion they said that they were opposed to it.....

Shrimati Renuka Ray (West Bengal) : What have they said now ? **Shri Naziruddin Ahmad:** If they are changing, I do not know about that.

Shrimati Durgabai: You too must change along with them.

Shri Naziruddin Ahmad : I do not think they have expressed any recent opinion. Apart from rumours their legal opinion duly approved by the Government has been sent by their Judicial Secretary and it has been circulated to us. Any other opinion has not been circulated to us. If they have been circulated to the private ears of any Members I cannot take any notice of it here. The Government of Bengal is against the Bill. The big people are against it.

Shri Sondhi (Punjab): They have compromised, I am told.

Shri Naziruddin Ahmad : I do not think they have put themselves in a compromising position at all. Go to any Bar Association and listen to what they talk. They are getting tired of it. The very eagerness with which the Bill is sought to be pushed through the House.....

An Hon. Member : Is it all relevant to the amendment ?

Mr. Chairman: I would draw attention to amendment No. 31. It is quite relevant.

Shrimati Durgabai: He is only repeating himself.

Shri Tyagi: Since the Hon. Member has alleged that the Bengal Government was against this Hindu Code I want to know from him if the Chief Secretary of the Bengal Government is opposed to it?

Shri Khurshed Lal: He is not the Government of Bengal.

Shri Naziruddin Ahmad : The Government of India circulated the Bill and asked for opinion. The various State Governments gave their opinion and those opinions have been circulated to us. I have no private communication with the Bengal Government. The public opinions which have been circulated to us are there, any hon. Member can see them. There you will find that the Bengal Government opposes the Bill.

Pandit Malaviya (Uttar Pradesh): Why should they see if it is not convenient to them?

Shri Naziruddin Ahmad: They find that the law is not convenient to Bengal soil. What is more, all the judges of the Calcutta High Court— I suppose they should be regarded as educated people, not orthodox, not the rabble, they are fine, cultured, intelligent men. They are not mere orthodox men—gave their opinion jointly that they are opposed to the Bill.

Shri Raj Bahadur: May I know. Sir, whether it is permissible for the member to attack the very foundation and principle of the Bill now ? Is he speaking on clause 2 or on the whole Bill ?

Sardar Hukam Singh: It was an answer to the interruption on his statement that Hindus did not want it.

Mr. Chairman: Order, order. So far the observations of the hon. Member were relevant under amendment No. 31. But at the same time I would request him not to be very general in his remarks. He ought to confine his observations to the particular points made out by him in his amendment.

Shri Naziruddin Ahmad : The point before us is whether the law should be made applicable to persons who do not agree to be bound by it. If you do not give the option you will be forcing the law upon people who do not want it. That is why I thought that in order to strengthen that point the objection of eminent authorities like High Court Judges and the Government of Bengal was relevant. It shows that the people are against it—not the backward people but intelligent, civilised people who have some status in society. That was my purpose in referring to it.

I, therefore, submit that in view of all these objections, the law should be made applicable to those who are particularly enamoured of it, who think they will be benefited by it, but it should not be made applicable to one and all to those who do not want it. I submit that those who are opposed to the Hindu Code Bill are a minority in the House, but those who are in favour of the Bill are a microscopic minority in the country. The whole question is : is it enough for you to be fired with the idea that the Hindu Code is a good thing if the people do not want it ? In a democratic society you must not force a benefit upon those who do not want it. The people do not want it. Therefore, you must not force this upon them. I therefore heartily support the two suggestions made by the two hon. Members that the law should be made applicable first to those who want it. Then if we find that there is ready acceptance, that it is palatable to the Hindus, that they want it, that they readily accept it, then this Parliament may later on extend it to other people or to other classes of people. That should be the proper way. As has been suggested, if once we accept this principle, make its application voluntary, the whole controversy will vanish. The bitterness of the majority outside and the minority in this House will disappear at once. Then there will be no question of a difference of opinion. If it is good it is good for the highest class of society. It

is not good to the condition of people who belong to the middle classes and to the lower classes. It is for this reason that I think that the suggestion in that amendment should be accepted.

Then, one of my amendments is that sub-clause (3) should be omitted. That sub-clause runs to the effect that:

" The expression ' Hindu ' in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code . "

It says in effect that though a man is not a Hindu, if the Code applies to him he is a Hindu. It begs the very question. It could have been said a Hindu is a Hindu ! The draftsman was not satisfied and he tried to make confusing words confounded by the addition of subclause (3). To whom would you make the Code applicable ? If you say a man is a man who is a human being it does not help anyone. It simply shows some confusion of mind. You cannot say that a Hindu is not a Hindu but that although he is not a Hindu provided the Code applies to him he is a Hindu. I think a simpler way of approach should have been far more satisfactory and better. If you say all persons having two legs and two hands are Hindus I have no objection. If you say all Hindus are Hindus even that would have made some sense. You say, all Hindus are Hindus, all Jains, Buddhists, and Sikhs are Hindus, the illegitimate children of those are Hindus and then all those are Hindus who are not Muslims, Christians, Parsis or Jews. You are not satisfied with this roundabout and circumlocutory way of expression. You say that even though a man is not a Hindu he is a Hindu if this Code applies to him. You should be more straightforward, more logical, more clear in your expression. The draftsmanship of this clause shows the hand of many a person but it has not been properly drafted. That is why there has been so much of confusion, so much of roundabout expression. I therefore submit that sub-clause (3) should be omitted. A Hindu should be a Hindu, one who follows the Hindu religion. With regard to Buddhists, Jainas and Sikhs, I should quite agree to them being included provided the Buddhists, Jainas and Sikhs agree to be bound by the Hindu Code. Those persons also are Hindus who are not Muslims, Christian, Parsi or Jew by religion. But you say that a person is a Hindu, though he is not a Hindu, if he is bound by (his Code. Somehow or other that is a most unsatisfactory way of approach.

5 p.m.

Shri Tyagi: He is a *de jure* if not a *de facto* Hindu.

Shri Naziruddin Ahmad : If you want loo call a person a " Hindu ", I have no objection. That is a simple way. You simply enumerate him as " Hindu ". Why this circumlocutory, round-about and circuitous way of expressing it? It shows, I say with respect, some confusion of thought.

Dr. Ambedkar : You are more confounded than anybody else in this House, I am afraid.

Shri Naziruddin Ahmad : I have other amendments which I shall try to deal with tomorrow, if I am not interrupted like this.

The House then adjourned till a Quarter to Eleven of the clock on Tuesday, the 6th February, 1951.

HINDU CODE—*contd.*

Mr. Speaker: The house will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Clause 2 was under discussion. Mr. Naziruddin Ahmad will continue his speech.

Shri Naziruddin Ahmad (West Bengal): Sir, at the very outset the House is in a very hilarious mood. I believe the subject is extremely important and it requires very grave consideration. Yesterday I dealt with some of my amendments. I shall now come to amendment No. 31 which reads: After sub-clause (4) of clause 2 add the following new sub-clause :

" (5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any state from such time or by such stages as the State Legislature may from time to time by Act provide."

The Bill is highly controversial and it is improper even for those who believe it to be highly beneficial to the country to force this Bill upon the entire Hindu population. I submit that this House should not take this hasty step. I do not contend that this House has no jurisdiction, but I do submit that this House should not take upon itself the serious responsibility of forcing a law upon an unwilling people. This House was specially constituted to obtain independence from the British Government, and in due course through its constituent side it passed the Constitution.

The Minister of Law (Dr. Ambedkar) : Sir, is this relevant at this stage ? I do not like to interfere in the debate but certainly we have spent more than four hours in discussing a single clause.

Mr. Speaker: I was just watching for a minute or two whether the hon. Member's reference was leading to some sound argument that he was coming to.

Shri Naziruddin Ahmad: I was submitting that this House has not the mandate of the country to pass this Bill. This is a fundamental matter affecting the religious and social structure of India. Therefore, it is proper and relevant to consider our exact position. I am not going elaborately into all the history because that has been done at the proper stage, but I cannot forget the fact that a large number of hon. Members of this House are new Members and were not present at that stage. So, a very brief resume of those points may, I submit, be not irrelevant.

Mr. Speaker: I may inform the hon. Member that, so far as the

representative character of this House is concerned as also its competency to consider such a Bill, that has been sufficiently thrashed out before and the present stage is not the proper stage of again raising that kind of an argument. We are now discussing the Bill clause by clause and clause 2 is before the House, so, he will restrict his remarks only to the provisions in clause 2 and the amendments before the House. Of course, the scope for that is wide enough, but not for questioning or even doubling the representative character of the House or its capacity to pass this Bill. That will be unnecessarily repeating what was said at the previous stages.

Shri Naziruddin Ahmad : Sir, I bow down to your ruling. I am not at all questioning the representative character of the House or its competency. But the question is that we have not consulted the people. Not that we have no jurisdiction, not that we do not represent the people, but on a social legislation of an all-embracing character like this we should have obtained some mandate. That was the point, which I was going to submit. I do not wish to elaborate it. I wished to refer to this matter in order to develop my argument with regard to amendment No. 31. I want by this amendment to restrict the application of the Bill to the different States, upon the State, by Act, prescribing its application, and also limiting the conditions on which the Bill should apply, the persons or classes of persons to whom the Bill should apply and the stage or stages through which this application should come. Therefore, my point, so far as this amendment is concerned, is that the Bill should not be made applicable to all persons outright.

The State Government are in a better position to know the conditions of the people, their wishes and desires and their needs. It is therefore proper to allow each State to apply the Law and to such extent and through such stages as the Legislature, by Act, may provide. I know that so far as reports are concerned the Government of Bengal has opposed this bill. Though it was given out yesterday that in private conversation some hon. Member was told, some individual Minister in Bengal was in favour of the Bill, that is not the official position taken by the Government of Bengal. I dare say that each State has its different problems to solve with regard to this Bill: its stage of civilisation, its state of economic condition and various other factors must, I believe, obtain in different degrees and in different circumstances in the different States. My point is that for those hon. Members who feel that this Bill is good there are

a much larger number of hon. Members who feel the Bill is not good for them. Therefore, my submission would be to strike a *via media*. Let the Bill be accepted by those who think that it is good for them, but let them not force the Bill upon others.

Now, so far as the States are concerned, the State Legislatures would be the proper authority to apply law, adapting the application to suit the differing circumstances of the case. Though the Hon. Minister in charge of the Bill is enamoured of uniformity in the laws, I think that it is a principle, which should yield to practical considerations. I submit that the State Legislatures are the proper authority to ascertain the Actual opinion on the Bill and the application of the Bill should also be controlled by them. To this principle, there should be no objection. If, as is claimed, the Bill is a very beneficial one, acceptable to the people, acceptable to the Hindus of India, nothing could be lost by letting the State Legislatures express their opinion. The State Governments have their Departments through which they are in a position to know the wishes of the people and the members of the State Legislatures are also in a position to know the minds of the people. I therefore, submit that the application of the Bill in different circumstances and to different people should be left to the local Legislatures. If this is done, then much of the sting about the Bill and much of the objectionable features of the Bill would at once disappear and the controversy would immediately stop. The more the supporters of the Bill are convinced that the Bill is highly acceptable, the more they should be ready to subject themselves to this test of acceptance of the Bill by the local legislatures. I submit that this amendment raises an important principle and if the claims are as high as they are alleged then this principle should be accepted. It is conceivable that there are corners in the States where this law would Act adversely. There are various provisions bearing on divorce and there are various customs in different parts of the country for marriage and divorce. If we apply this Bill to them straightaway that would take away the simplified marriage and simplified divorce and substitute complicated forms of divorce and marriage. To that extent, their existing rights would be affected. There are, again, people who do not like to enjoy the rights of marriage and divorce as prescribed in this Bill. To them also, it would be a hardship. From any point of view, therefore, the application of this law to the peculiar circumstances of each State must be left to the local Legislature.

Then Sir, I have been jeered and jibed at many times.

12 NOON

Babu Ramnarayan Singh (Bihar): No.

Shri Naziruddin Ahmad : That has been my privilege. I believe that the delay that has occurred was due to two reasons, the author of both the reasons being Dr. Ambedkar himself. First of all the Bill was sent to the Select Committee. For reasons best known to him, it came back from the Select committee in the form of an altogether new Bill. That led to some controversy, which took about six months' time. I submit that this portion of the delay was not due to me. If I had any fault, it was to point out the error and thereafter it was for the House to give a ruling.

Shri B. Das (Orissa): Why apologise ?

Shri Naziruddin Ahmad : That delay was due to Dr. Ambedkar himself. I do not blame him for this. I do not attribute any motive to him.

Dr. Ambedkar: He forgives me!

Shri Naziruddin Ahmad: Probably, he wanted to improve matters and make matters worse. The next reason for the delay was.....

Dr. Ambedkar: I do not think any hon. Member of this House has charged my hon. friend with dilatory tactics and I do not see why he should indulge in an explanation which is certainly not wanted, so far as I am concerned. He is wasting time.

Shri Naziruddin Ahmad: No, Sir. At least one word by way of explanation is necessary. Although I might not have referred to it, the charge has definitely been made and it goes in the proceedings to be read even after 100 years. I submit that the next reason for the delay was that in the Bill, which was referred to the Select Committee, there were enormous numbers of substantial changes and those matters had to be put before the House just to argue that the members of the Select Committee had not a proper opportunity to consider them in detail. Those controversies are gone, but public memory is short and Ministerial memory is shorter. By a strange coincidence, by a strange freak of fate, the delay is attributed to me. I think it is quite unnecessary to take it up and discuss it. So far as this matter is concerned, as Dr. Pattabhi Sitaramayya said on one occasion, dilatory tactics are permissible. If any Member is satisfied that a Bill must be opposed, dilatory tactics are

permissible. He may oppose—so long as he may—fairly, and even unfairly, if he must. I submit that I do not take recourse to this extreme step. I believe that the Bill is a controversial one and therefore some amount of controversy is inevitable. The controversy is embedded in the Bill itself.

Dr. Deshmukh (Madhya Pradesh) : In Dr. Ambedkar ?

Shri Naziruddin Ahmad : Yes, of course. When the draft Bill was circulated, the Hindu Law Commission went round the country and collected a large number of opinions. The opinions were preponderantly against the Bill. These very women who are supposed to be anxious to liberate themselves through this Bill opposed the sittings of that Commission in different places in large numbers.

Shri Tyagi (Uttar Pradesh): Clause 2 is now under discussion; what has all this to do with it ?

Mr. Speaker : The Chair is taking care of it. But if hon. Members want to do so, they may ; but in that case his speech will be prolonged and may go on till tomorrow evening. Therefore, let him go on in his own way. If he is irrelevant, the Chair will stop him.

Shri Naziruddin Ahmad: Sir, it is these interruptions, which certainly create a certain amount of difficulty. When a question is asked, it certainly requires an answer. After all I am accustomed to these interruptions and nothing is more acceptable to me than these interruptions.

Sir, clause 2 is a very important one because it deals with the application of the Code. Many amendments have been suggested to this clause, the underlying idea of all of them being to prevent its universal application straightaway, considering the magnitude of the legislation, I for one feel that the house should take serious consideration of the suggestion to proceed slowly and to adapt the Bill to suit local conditions. If that is done, the impact of the Bill would be more tolerable and the objections would largely vanish. Sir, I have done.

Pandit Thakur Das Bhargava (Punjab) : Sir, in regard to the application of the Hindu Code to the various subjects and peoples who come within the purview of clause 2, I have to submit for your consideration a few words.

I agree with the previous speaker that the scope of clause 2 is very wide and therefore, all these matters which have been submitted for the consideration of the house are quite appropriate and should be considered by the House in regard to application of clause 2. But at the same time, I am of opinion

that by practical considerations we are compelled to limit the scope of clause 2 to such persons to whom the Hindu law applied previously. I am not here to minimise the efforts of those who think that in pursuance of the directive principles we ought to have a Civil Code for this country. I am for it, the whole country is for it. We should, therefore endeavour to have a Civil Code for the whole country and I would very much like that Hon. Dr. Ambedkar who has done so much for this country in the matter of giving us a Constitution and bringing forward the Hindu Code which affects about thirty crores of people will in time bring forth a new Civil Code for the whole country.

But at the same time I do not think it is practicable to say that this Hindu Code should be turned into a Civil Code. (*an Hon. Member: Why not ?*) The question is being asked "Why not?". I would certainly submit the reason. Now, as I have just pointed out. I admire the spirit of the previous speakers Mr. Sarwate, Shri Vidyavachaspati and Shri Jaspat Roy Kapoor, when they want one Civil Code for the whole country. As a matter of fact this attempt of Dr. Ambedkar in incorporating certain principles which ought to have been the real basis of the Hindu Code is simply laudable. This Hindu Code, according to some, is a Code which ought not to apply to Hindus alone, because this Hindu Code embodies principles which are not taken from the Hindu law alone. In regard to certain principles, they are so broad based that I should think they may eventually furnish a basis for having a Civil Code.

As remarked by the previous speaker, marriage is certainly one of the ten *samskars*. It is a religious affair. But in this Code we have 'got the provisions of the Civil Marriage Act also. My humble submission is that so far as the question of Civil Marriage is concerned it ought to have been contained in the Civil Code which we have all in view and which will be equally good for all the citizens of this country. Therefore, the complaint that this Hindu Code is neither based on Hindu Law nor on any universal law is correct to a certain extent and my view is that the principles of the Civil Marriage Act which are embodied in the Act of 1872 should not have been incorporated in the Hindu Code. I would, therefore, very much like that these provisions are taken away and the Hindu Code remained only a Hindu Code. This inter-mixing of the principles of the Civil Marriage Act into the Hindu Code should not have been allowed.

Now, Sir, I maintain that today we cannot have a Hindu law like the one which was propounded by our ancestors. In those

days Hindus lived in an exclusive way. The impact of civilisation and other religions had not begun so far as Hindus were concerned. Now in every Code, in the Muslim Law, in the Christian Law, and in the Hindu law we have got principles which are not germane to those laws alone but which as a matter of Act have been made universal by the impact of other forces. For instance in this Hindu Code we have got monogamy which is a special feature of the Christian Law. The authors of the Hindu Code want that daughters should be given a share of the property. Now this was not known to Hindu law, so far as married daughters were concerned for a very long time. Of course, there is no practice or principle, which has not been experimented upon at one time or other by the Hindus.

[SHRIMATI DURGABAI *in the chair*]

This is a different matter. But today I think he will be a bold man who would like to say that the principles of yore be introduced in the Hindu Code. As the society progresses there is also a progress of the principles. Now if anybody wants to say that the laws of Manu should be introduced in Republican India, I think he will be a mad man. Does any one in this House want that no *Shudra* should be allowed to read the *Shrutis* ? On the contrary, I for one welcome the Code for the very reason that Dr. Ambedkar is supporting it. Now all things have changed and all values have changed. The Hindus have burnt their boats so far. Now he will be a bold man who will come and say, " I want that the Caste system of the Hindus based, as it is, on birth should be introduced in the Hindu Code ". I will have nothing to do with this Hindu Code if it is based on the caste theory. I know that so far as the original Hindu law is concerned the caste system was not based on birth. I challenge anybody in this house, or outside, if he could convince me that the Hindu Law or the system of the Hindus was based on birth. But what do we find today? Birth is the real basis of caste, whereas according to the strict notions of Hindu law and the *Shastras*, birth has no place in it whatsoever, we find that Hindu society is not what it used to be. Are we now going to introduce all those laws of Manu, for instance, that a *Shudra* cannot read the *Shrutis* etc.? Now we have finished with them.

So far as the criticism goes that the Code is very bad, so bad that it should apply only to Hindus, Muslims, etc., I am very sorry I have to challenge that statement and fight it. Some of the

principles which are put in the bill are exceptionally good, so good that I would like to have this Hindu Code. As I stated. I am not an opponent of every clause and word in it. I want that all the good principles, which are consistent with the principles that we have accepted in our society today, should be passed in this House. I am opposed to certain provisions and I shall have occasion to speak about them at the proper time. But as regards the statement that it is so bad that it should not apply to Hindus or Muslims, etc. I for one do not agree with that statement.

I was considering the question whether it should apply to any but Hindus. Three or four motions have been made, by Mr. Sarwate, Mr. Indra Vidyavachaspati and Mr. Jaspat Roy Kapoor had something to say about it. In regard to them my submission is that, if it were possible to do so I would have myself supported those motions. But may I humbly ask the non-Hindus in the House if they like this proposal ? They do not like it.

Shri J. R. Kapoor (Uttar Pradesh) : The non-Hindus have already been brought within its scope.

Pandit Thakur Das Bhargava: It is entirely wrong to suggest that. So far as Muslims, Christians, Parsis and Jews are concerned, it specifically say that the law shall not apply to them. Where is my friend's suggestion that it has already been applied to Muslims Christians, Parsis and Jews ?

Shri J. R. Kapoor: I said non-Hindus excepting Muslims, Christians etc.

Mr. Chairman; Let there be no interruptions.

Shri R.. K. Chaudhuri (Assam): On a point of information, Madam, may I know whether the Hindu Law is not applicable even now to the Muslims, Bohras and Cutch-Memons ?

Pandit Thakur Das Bhargava: My friend has anticipated me. The present Hindu Law as we understand it does apply to many classes of persons. It does apply to persons who do not call themselves Hindus. And so long they have never objected to it. So far as Sikhs, Jains, Buddhists are concerned, it is the Hindu Law which is applied to them. And it has been applied to them from times immemorial, from the time that the British Government was established. They have always been using it. Even Muslims have been using it. (*An hon. Member* : You are excluding them). We are not going to exclude them. This Hindu Code, according to clause 2, shall apply to all persons who are not Muslims, Christians, Parsi or Jews. So far as Muslims are concerned and so far as their law is concerned we have not changed anything and we have not made any law for them. We

do not want to say that their customs as altered by the Hindu Law do not exist.

For instance take the Punjab. We were not bound by the Hindu Law as such. I am speaking of the villages of the Punjab. So far as the cities are concerned, many Hindus and Muslims are governed by the Hindu and Muslim Law. But so far as the rest of the Punjab is concerned we were guided or dominated, or we were governed, by custom. Custom was the first rule of decision in the Punjab so far as Hindus, Muslims and Sikhs were concerned. Even today it is custom which governs us. May I with your permission. Madam, just read out the Preliminary Section of the Punjab Customary Law by Rattigan ? It says :

" Custom in this Province is the first rule of decision in all questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution, or alluvion and diluvion."

In regard to the Customary Law of the Punjab, all the Hindus, Muslims and Sikhs in the village areas were bound by the Customary Law, which practically was the same for all. And it has furnished a very good basis for the Civil Code because the customs were the same, the result was that we were wedded to the agnatic theory of succession and all the customs flowed from that. It is difficult for the Punjabis to accept the principle of inheritance of married daughters because the agnatic theory is there. In fact it prevailed in Assam also before Assam came into the domain of the Bengal High Court. If we find out what was the source of custom, all the principles and notions of Hindu Law which prevailed throughout the country were the source from which this custom grew in the Punjab and in other parts. Not that custom is an exclusive feature of the Punjab only: in various parts of India custom has to a very great extent altered the original Hindu Law.

Shri R. K. Chaudhuri: I am sorry to interrupt. But may I ask whether the Customary Law in the Punjab will over ride the clear provisions of the Hindu Law, or what will be the position of the Punjab later, that is, after this Bill is passed ?

Pandit Thakur Das Bhargava: So far as the Punjab Law is concerned, I have given the source of law, i.e., section 5 of the Punjab Laws Act. I have just read from section I from the preliminary observations of Rattigan which is based on the Regulation of 1825 and section 5 of the Act of 1872, so far as

Punjab is concerned. This is the present Law of the Punjab unless it is altered by this Hindu Code. This was my difficulty when I gave an amendment to that effect : leave the Punjabees if they want to be governed by their own custom. I have given an amendment in regard to clause I to the effect that Punjab should be excluded from the operation. The reason is that from days immemorial we have been governed by custom and we want to stick to that custom because that custom is the mixture of the Hindu Law as well as other notions of Civil Law.

I may be excused if I just divert for a minute to the present mentality of the Hindus, as a whole. I want to see a Hindu in this country who can say that he is a Hindu according to the old notions of Hinduism. The present mentality of the educated Hindus of this country is a sort of eclecticism. They are followers of Arya Samaj, Brahma Samaj, some people have in the background of their minds or in the inner sub-conscience, certain conceptions which we have imbibed from Muslims, Christians and from other religions and we educated Hindus—I can speak for myself and some of my friends— want to have a sort of eclecticism. We take the best out of every religion and begin to think that this is the right thing and that this is Hinduism. Perhaps this may be true of the rest of the world also. Where is a true Christian to day who believes in the teachings of the Bible? I can quote from the Muhammadan Law also. Where is the true Muhammadan to be found? We know that the Prophet of Muhammadans married a girl who was below the age of 14. When the Sarda Act was passed, if hon. Members of this House remember very well, Mr. Mohamad Ali performed a marriage in the Queen's Garden just to contravene the provisions of the Sarda Act because people wrote that the Sarda Act had made an inroad on the Muslim religion by taking away the liberty of marrying a minor. Those persons who have prejudices about religions may say whatever they like but to-day at the present moment, there is no orthodox Hinduism, no orthodox Muhammadanism and no orthodox Christianity. This is the bare truth and therefore, I am not surprised if Dr. Ambedkar has brought in a Bill, which is consistent with the present times. Many of these provisions look new to those who are absolutely orthodox but at the same time, we must recognise that we have progressed too much on the lines of modern civilisation and we cannot go back. If they want to bring back all those ideas of the past which have been practically given up by society in general, they are mistaken. As a matter of fact, Dr. Ambedkar has made

an unconscious attempt...

Shri R. K. Chaudhury: We are getting more and more confused by what the hon. Member is saying. I want to make it clear whether the hon. Member wants that the present Hindu Code should go to amend the Punjab Customary Law and whether in the Punjab Customary law bigamy is banned or not. If bigamy is not banned and if as the hon. Member wants to have the Punjab to be excluded from the operation of the Hindu Code, may I know his views about bigamous marriage?

Mr. Chairman: The hon. Member should know that he has already made his point clear and- the hon. Member who is now speaking may be allowed to have his say and he need not be interrupted from time to time.

Pandit Thakur Das Bhargava: I am very glad that my hon. Friend has put a question to me. So far as bigamy is concerned. I have made my position absolutely clear when some time back I introduced a Bill in this House. That bill is designed to enforce monogamy in the whole of India even as regards Muslims, Hindus, Christians and everybody and including the Punjab. I want that so far as this Customary law is concerned, if there are any such customs which agree with the accepted ideals of society and humanity as a whole or a major part of that society, then those ideals we should adopt. I want that there should be no bigamy in the Punjab or elsewhere. This is my humble reply. So far as the general question that he has put is concerned whether this Hindu Code should modify a custom or not, I am of the opinion that so far as our custom is concerned, I want to stick to it in the Punjab, and we want to go on with that custom.

So far as custom and other things are concerned, if my hon. Friend has just studied the amendments which I have already given, he would see that I want good customs in all places should remain as they are, because I am not in favour of violently changing the law of the people of this land in this manner in which this Hindu Code seeks to do (*Hear, hear*). At the same time, I do not want some portions of this Hindu Code to be enacted for the whole of India. Since I got an applause with a view to pin me to something which I do not myself like, I want to make it absolutely clear that I am not against this Hindu Code. I want that certain portions of it should be enacted, but there are certain portions which I do not like, (*Interruption*). So far as certain principles in this Hindu Code are concerned, which are of a universal nature which will improve the society, I want that those provisions should apply to the Punjab and it is

for this reason I am supporting this amendment. Hon. Members have not read the amendments which I have already given. The amendment runs thus :— That for clause 2, the following be substituted, namely: "2. Subject to the provisions of section I this Code applies— (a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion;

(b) to any other person who is not a Muslim, Christian, Parsee or a Jew by religion;

(c) to every woman who married any person was not a Muslim, Christian, Parsee or a Jew by religion;

(d) to any child, legitimate or illegitimate, one of whose parents was a person who was not a Muslim, Christian, Parsee or Jew by religion;

(e) to a convert to any religion except the Muslim. Christian. Parsee or Jew by religion. "

I want that this Hindu Code Bill as it is amended by this House and according to my wishes should apply to the Punjab. I do not want that so far as the Punjab is concerned the customs that we have got there should be violently changed by this Hindu Code but consistently with this I want to adopt such of the provisions of the Hindu Code as are acceptable. As for bigamy it should no longer exist in the Punjab. We want to have a monogamous Punjab.

Shri R. K. Chaudhuri: Then I withdraw my applause.

Shri J. R. Kapoor : Do I understand the hon. Member to suggest that different portions of the country and different sections of the community should be permitted to pick and choose particular portions of the Code which are acceptable to them ?

Mr. Chairman: The hon. Member must address the Chair and he should put the question through the Chair.

Pandit Thakur Das Bhargava: I am very glad that Mr. Kapoor should have put this question to me. Since I also put a question to Mr. Kapoor when he was speaking yesterday, this is tit for tat. I then asked Mr. Kapoor when he was speaking whether he wanted that every person should have liberty of choosing a particular clause and whether he shall be bound or not. His proposition was that out of the Hindu Code consisting of so many sections every individual be he a Hindu, Muslim, Christian or Parsee or whoever he may be able to choose a particular section to bind him and not others.

Shri J. R. Kapoor: On a point of personal explanation, I never said that. What I said that of all portions in the Code one should

be at liberty to pick and choose any particular portion. There are different parts relating to marriage, adoption and inheritance etc. It should be open to one to pick and choose the part relating to marriage and say: " I want to be governed by this chapter." I never said that one particular section should be accepted by one and another section by another.

Pandit Thakur Das Bhargava: I am very sorry that my hon. Friend controverted the statement that I made. I put this question in those very words and he replied to that question and his reply was that he would rather like that even a particular section could be chosen. Unfortunately, he does not remember that.

Shri J. R. Kapoor : I will refer him to the speech which I delivered yesterday.

Pandit Thakur Das Bhargava : After reading the section I found the very thing that I am submitting.

Shri J. R. Kapoor: I suppose it is not so.

Pandit Thakur Das Bhargava : I take it that what my friend says is the true version.

May I humbly ask my Friend whether he wants that a person can choose out of the Hindu Code and say that so far as marriage is concerned he shall be bound by the Hindu Law and so far as succession is concerned, he shall be bound by some other law? That would be an impossible proposition for a person to say that he would be bound only by one Chapter of the Hindu Code and not by others. The whole law is so interwoven and interconnected that a person cannot say that he would be bound by one provision and not by the other provisions in another Chapter. That is entirely a wrong proposition. Succession, maintenance, guardianship, all these provisions are, as a matter of fact, so inter-connected that it would be impossible to have a proposition like that. Yesterday also when I put my question, it was with a view to bring into relief the wrong proposition that my hon. friend was wanting to lay down for the whole of India. According to him, a Muslim may be able to say that he likes a certain Chapter and would be governed by that and in respect of the rest, he would be governed by the Muslim Law. I ask, is it possible, is it practicable, is it a proposition which can be laid before the House ? I submit, not, I submit that that would be a wrong approach to the question at issue. In fact, that is not the question at issue.

The question of even a Civil Code, as I have submitted, is not germane to the subject. While I admire those who want to have

one Civil Code for the whole of India, I cannot agree, and I do not think that it would be a practical proposition to have one Civil Code for Muslims, Christians, Jews, etc. What was the reaction of our friend Mr. Naziruddin Ahmad ? He never agreed to that. He raised the question of fundamental rights under the Constitution, and said that you cannot have this Hindu Code. When it came to asking a question of him whether he would like to be governed by the Hindu Code, he said, " It is bad enough for the Hindus ; you want to give it to the Muslims, Christians, etc.". That was his attitude. I very humbly submit that as a matter of fact, the provisions of the Constitution Act have not been fully understood by my hon. friends who propose that this Hindu Code should apply to Muslims, Christians, etc. I can understand that in a light-hearted spirit. If they want to throw away the Hindu Code Bill they may say anything in order to show the absurdity of the provisions. But, I do not think that it is a feasible proposition to suggest that the Hindu Code should apply to Muslims. Christians, Parsis, Jews, etc.

Shri R. K. Chaudhuri: The principles.

Pandit Thakur Das Bhargava: My hon. Friend Mr. Chaudhuri says, and I think he will again applaud me when I say that the principles do apply. I quite agree that some of the principles even of the old Hindu Law are of such a universal nature that they apply to people of all religions, in all circumstances. So far as that is concerned, that would be the basis of the common Civil Code. Even now, we have certain principles in our present law which are the basis of the common Civil Code, like the Sarda Act, Majority Act, etc.

Reference was made to articles 25 and 15 of the Constitution Act and some of the provisions in article 25 were even ridiculed. My hon. friend Mr. Nazuriddin Ahmad said that he cannot make anything out of the words " Subject to public order, morality and health " and that they were meaningless. They are not meaningless. They have not full meaning; not only full meaning, but are of very great significance. He seems to have failed to realise the significance of articles 25 and 15. It was said that under article 15, there shall be no discrimination, and that therefore, we cannot have a Hindu Code, a Muslim Code and other Codes. My humble submission is this. Although I would very much like to have one Civil Code for the whole country. I submit that it is not inconsistent with the provisions of the Constitution Act to have a Hindu Code, a Muslim Code and other Codes. I am very sorry to say that I have heard my hon.

friends who are in favour of the Hindu Code Bill say that so far as the provisions of Articles 15 and 25 of the Constitution Act are concerned the provisions of the Hindu Code Bill are not consistent. For instance. I am very sorry to submit that I have heard even from the author of the Hindu Code Bill to say that so far as the Constitution is concerned, there can be no discrimination between brothers and sisters, between a male and a female so far as the Hindu Code is concerned.

Dr. Ambedkar: Only on grounds of sex.

Pandit Thakur Das Bhargava : I am coming to that. That is one proposition that has been put forward that on grounds of sex there cannot be any discrimination and article 15 of the Constitution will stand in our way. The other gentlemen, who are opposed to the Hindu Code, also rely on articles 15 and 25 and say that there can be no discrimination. May I humbly ask the Hon. Dr. Ambedkar, if there could be no discrimination on the ground of sex, why he has got so many provisions in the Hindu Code itself which discriminate between the sexes.....

Dr. Ambedkar: There is no provision which discriminates only on the ground of sex.

Pandit Thakur Das Bhargava: This provision of one-fourth for a married daughter and one-half for the unmarried daughter ; why is there a different succession if a man dies and a different one if a woman dies ?

Dr. Ambedkar: That is not anything based on sex only.

Shri Tyagi: On death also.

Mr. Chairman: I think the Select Committee report has made no such discrimination.

Mr. K. C. Sharma (Uttar Pradesh): That article is not under discussion now. He may come to his amendments.

Pandit Thakur Das Bhargava: As a matter of fact, even this discrimination that the married daughter may not have a share in the father's property is not based on ground of sex alone, as my hon. friend says. My submission is that it is consistent to provide in this Hindu Code that a married daughter shall not succeed to her father's property. I was just now on the argument propounded by the Hon. Dr. Ambedkar. On the question of maintenance, a wife is entitled to be maintained by the husband. Is the husband also entitled to be maintained by the wife ?

Shrimati Renuka Ray (West Bengal): Why not ?

An Hon. Member: There are many such instances.

Pandit Thakur Das Bhargava: My hon. Friend asks ; ' why not ', I am very glad that she has adopted this gallant attitude.

Has she consulted her sisters ? Our Chairman does not say so. I submit that it is a very wrong principle to suggest that on the basis of sex, equality should be enforced in such a manner which is not consistent with certain conditions of life. I maintain that the Hindu Code would not violate any provision if we maintain that a married daughter does not succeed to the father's estate. She succeeds her husband or father-in-law. I am dead certain that unless and until we recognise the rights of women, unless we give them full rights, we shall be losing very much in certain strength of character which arises only if women are economically independent. I submitted when I was speaking at the consideration stage, and I maintain it now that we are all committed to that and we cannot but give rights to our sisters; we must see that we give them full rights. The only thing that I am opposing is the manner in which those rights are given.

So far as the Punjab is concerned, as I submitted, we are wedded to this theory that a married daughter when she goes to her husband's family, she becomes a part of that family, and is the pivot of that family. Therefore, the trouble with the Punjab is that they cannot possibly accept that a married daughter should succeed to her father's estate. So far as the other principles are concerned, we are still being governed by them and as I submitted they are principles which would be a better basis for a Civil Code rather than for a Hindu Code. This is not discrimination on grounds of sex at all but due to certain conditions of life. Suppose you pass a law to-day that all males should cook food and that females should not; will that be right? That will be entirely wrong.

Pandit Krishna Chandra Sharma (Uttar Pradesh) : What is the clause on which the hon. Member is speaking ? Is all this relevant to the clause under discussion ?

Pandit Thakur Das Bhargava: You have maternity legislations referred to in the Factories Act. Should all that legislation apply to males also?

Shrimati Renuka Ray: How is all this relevant to clause 2 ?

Mr. Chairman: Too many Members speaking at the same time leads to nothing but confusion. I think the hon. Member now speaking may be allowed to go on.

Pandit Thakur Das Bhargava : Those who raise the question of relevancy, I submit, do not seem to know what is relevant and what is not. They have all heard my friend Mr. Naziruddin Ahmad and he covered a very wide ground and in the reply also one has to deal with all those points touched upon. You cannot

say that, that was relevant and this is not. If what he said then was relevant, what I say now is also relevant. Moreover, so far as clause 2 is concerned, it is a very wide one and so the question of relevancy cannot arise in connection with this clause. The question whether the Hindu Code applies to Muslims or not was dealt with by Mr. Naziruddin Ahmad, and in view of that, I find it impossible to understand how my friend Shri Krishna Chandra Sharma—the able lawyer that he is,—can say that what I now say is not relevant.

Shri Raj Bahadur (Rajasthan) : Sir, on a point of order, can an hon. Member of the House take the seat of the Leader of the House ?

Mr. Chairman : The hon. Member may proceed to his own seat. Shri Tyagi: What is the matter ? I would like to know why I am made the target of this laughter. These seats are, after all for being occupied by someone. I found that one was vacant and I occupied it.

Mr. Chairman : The hon. Member might have exercised his right of freedom of movement in this; but there is no more to be said on this matter.

Pandit Thakur Das Bhargava : The question of equality before the law has been raised. And various *other* matters have also been raised. Articles 25 and 15 were referred to and it was stated that the provisions of those articles are being violated, that in view of those articles, we cannot enact a measure of the nature of the Hindu Code. But as a matter of fact, that is not the case. I would submit that even with the amendments now suggested by Dr. Ambedkar, this section will not read quite well. That is why I have suggested my amendments.

Some complaint was made by my Friend Mr. Naziruddin Ahmad that there is an attempt to apply the Hindu Code to persons who are not Hindus. But my humble submission is that my friend is not correct in saying that because if my friend takes the trouble to see to whom it applies now, he will find that it applies even now to many persons who are not Hindus in the sense in which the word is popularly understood even to-day. If you look into Gour's Commentary—1 think it is page 165—you will find that a good many persons who do not call themselves Hindus are still governed by the Hindu law. It governs many who are geographically Hindus, if I may say so. The Hindu system is not a creed. The term " Hindu " has a geographical significance also. Therefore, all those who are not bound by any other special law like those of Muslims, Christians, Parsis or Jews,

they are all bound by the Hindu Law. This is no innovation brought in by Dr. Ambedkar. He does not want that those who are not Hindus should come under the Hindu Law. This argument raised by my friend Mr. Naziruddin Ahmad is a wrong one. It is not a question of conversion at all. If the Hindu law applies to a person, he does not thereby become a Hindu. If he adopts some of the rules of succession, of divorce or marriage of the Hindu Law, he does not become a Hindu. And I may also say that this kind of thing does not help us either. What is the use of increasing the number of Hindus or Muslims? The days of proportionate representation or special representation are all gone. I don't care if a man is a Hindu or a Muslim or Parsi or Jew, as long as he is a good citizen. I do not want anyone to give up his religion. The argument of my friend Mr. Naziruddin Ahmad is based on the old psychology that the proportion of Hindu must be more; or that of Muslims must be less or that Parsi should be more and so on and so forth. As a matter of fact the subject matter of clause 2 is taken from the old Hindu law. The first part of it says that this code shall apply to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Virashaivas etc. But my humble submission is that this part of the clause is redundant. If it applies to Hindus, that is quite sufficient, and there is no point in saying that it applies to all forms of the Hindu religion or developments of the Hindu religion. Therefore, in my amendment, I have suggested that this Code applies " (a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion. "

And the next amendment is in the nature of a negative proposition. It defines those persons who are not bound by this Code. There is the customary law and the special law. For instance the Muslim of the Punjab can say, that he is governed by the customary law and not by the *Shariat*. Those laws which apply to Muslims are not at all touched by this Code. Those customs are all quite safe. My amendment says that it applies:

(b) " to any other person who is not a Muslim, Christian, Parsi or a Jew by religion; "

(c) to every woman who married any person who was not a Muslim, Christian, Parsi or a Jew by religion;

(d) " to any child, legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section; "

Part (d) I submit is redundant. When there is a child, legitimate or illegitimate to parents who are Hindus, then there is no question. The child is a Hindu. Not that it is wrong to say that

the child is a Hindu, but that is quite superfluous. The child of Hindus is *ipso facto* a Hindu. I have, on the contrary, omitted this part and proposed that it should apply even to any child legitimate or illegitimate, one of whose parents was a person who was not a Muslim, Christian, Parsee or a Jew by religion.

There is a proviso to the clause. May I humbly submit in regard to this proviso that it was probably introduced for some other purpose. If taken literally it would exclude those persons whom you do not want to exclude. It would exclude all the Punjabees. The wording of the proviso is very wide. If it is allowed to remain as it is, section 5 of the Punjab Succession Act will come into conflict. The proviso reads:

" Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code had not been passed, then, this Code shall not apply to that person in respect of those matters."

It means that the Hindus of the Punjab will not be governed by this Code.

An Hon. Member: What is the harm?

Pandit Thakur Das Bhargava: The harm is this. I want the whole of the Punjab and India to come under the Code. There should be some uniformity in regard to our laws. I have given an amendment that so far as our customs are concerned they should be preserved. I have even suggested that the sections of the Code should be relaxed in such a manner that if our Provincial Assembly wants certain portions of the Code to be applied they should be applied. I have gone further and said that in regard to our customs, such as relating to succession, we should be allowed to own our law. At the same time I do not want to be cut off from the rest of India. In fact that is the basis of the Hindu Code. If I had heard the speech of Dr. Ambedkar, which he made moving for the consideration of the Bill, he said clearly that he wanted the whole of India to be governed by this Code and that such things as had crept into Hindu practices in their pristine glory should be repaired. If I remember his words he said that those damages should be repaired. I am one with him and I do not want that the whole of the Punjab should be taken away from the operation of the Hindu Code. I would rather like to be governed by the Code which applies to the whole of India rather than plough my own lonely furrow. Therefore I am anxious that this provision should either be taken away or amended in such a manner so that these persons may not be

excluded.

If my amendment is accepted sub-clauses (3) and (4) need not be there at all. According to me all those persons to whom the present law applies do come under these five categories, which I have mentioned in my amendment. My amendment really seeks to attain the very same object, which the Mover of the Bill has in his view. Only the wording is different. But I agree with him that so far as the scope of the Bill is concerned it should be extended to all those persons to whom the Hindu Law at present applies and only Muslims, Christians and Jews should be excluded. It is not that I want their exclusion for any purpose but for the purpose that those people themselves would not like to be governed by the Code. If they think that they would like to be bound by the Code let them pass a resolution or make a proposal to that effect. I want that the Hindu Code should be the real basis of the Civil Code. I do not want that such principles should be introduced in the Code which will not accord with the principles of the future Civil Code.

In regard to adoption I submitted then and I submit now too that the customary adoption in the Punjab is based on the Civil Code. It does not have any real significance.

Mr. Chairman: Would the hon. member like to continue his speech after lunch or finish now in another five minutes?

Pandit Thakur Das Bhargava: I would like to continue after lunch.

The House then adjourned for Lunch till half-Past Two of the Clock.

The house re-assembled after Lunch at half-past Two of the Clock.

[MR. DEPUTY-SPEAKER IN THE CHAIR]

Pandit Thakur Das Bhargava: Sir, when we adjourned I was speaking on the provisions of adoption contained in this Code. I was submitting that in view of the fact that many Members of the House desired it there should be a Civil Code instead of a Hindu Code, I was submitting that certain provisions relating to adoption under the Hindu Law have been modified by custom. The present position is that this old system of adoption has to a very great extent been modified and now many notions of a character, not strictly religious, have crept into the very idea of

adoption. The old idea that by adoption an adopted person becomes the son of a person adopting, has to an extent faded away. In the Punjab, so far as adoption is concerned, according to custom any person can be adopted without any ceremonies. It is in the nature of the old Roman nominee system that an heir is appointed in the Punjab for carrying on the name of the family so that a person older than oneself can be appointed an heir and so such ceremonies are required as are required under the Hindu system of adoption. Moreover, even the incidents of that relationship are a bit different from the incidents which we find in regard to the system of adoption under the Hindu Law.

Shri Tyagi : In the Punjab your son can be elder to you in age ?

Pandit Thakur Das Bhargava: In fact, the question which my friend is asking is really not germane. As a matter of fact, when I gave the conditions under which a person could be appointed an heir, an heir is appointed—a son is not created by the Act of appointment of an heir. That is the difference. Under adoption the adopted son carries on the name of the family, perpetuates the name of the father and that is the way in which the family continues. In Punjab the family continues in another way. An heir is appointed and he carries on the name of the family, so that it is not true to say that in the Punjab the customary appointment or adoption of an heir is tantamount to creation of a son. Whether that is not there, under the Hindu Law the underlying idea was that a son was created by adoption, so much so there was a rule in the Hindu Law that the son of a lady who could not be married to the father could not be adopted and therefore there was some sort of ban against a daughter's son so far as adoption was concerned.

Now, under the provision of the Hindu Code it is necessary that for adoption a man should not be married, that he must be less than fifteen years of age. These incidents will not find favour in the Punjab. This provision will be too much to tamper with the custom of the Punjab, which does not contemplate any restriction as regards age or ceremonies or other restrictions, which are irksome.

Shri Tyagi : Because the son is a man to the father in the Punjab.

Pandit Thakur Das Bhargava: The child is the father of man in the whole world. So even now in the Punjab there is the custom of appointment of an heir, which is akin to adoption. My subscription is that Dr. Ambedkar has been kind enough to

those systems of law, which have been prevalent in the South, for instance, the *marumakkathayam*. Arrange the Code in such a way that there is no violent conflict for those who follow different customary laws in the matter of marriage, adoption etc. and see that their systems are allowed to continue. This Code goes to the root of the Hindu Law in certain matters. So far as they are wholesome we are prepared to accept them but in so far as there are violent changes which conflict with the notions of the people, I would very humbly submit to Dr. Ambedkar that where he considers the provisions of the Code at a later date he will be indulgent enough to see that there will be no violent conduct. I know when he introduced this Bill he was pleased to say that he would try to see his way to accommodate and would be prepared to accept certain amendments which partake of the character I have narrated above.

In regard to two matters—the question of adoption and the question of inheritance of married women—I must submit there will be such a violent conflict with the notions of the Punjabis in these two matters that they will not be prepared to accept the provisions of the Hindu Code. Even if it is forced down their throats, I submit there will be such a revolution in the society—I said on the last occasion that there will be revolt; there will not be revolt because we are too strong. There will be revolt in our minds and we will certainly not accept a custom to be forced down our throats that we cannot digest. One effect of such a step will be that when the father dies, since you are giving the father the power to make his will in any manner he pleases, the result will be that there will be forced wills by virtue of which the daughter will be disinherited. I am not against the inheritance of the daughter as such. Where you can have it, where it is in consonance with the ideas of the people, have it by all means. There is nothing objectionable in it. But the only point is that it is not expedient to have it in some places where it is not wanted. In the Punjab the daughters do not enjoy such a position that you can say that they do not get anything. I know that in Madras and other places the daughters are not treated so favourably, perhaps, as in the Punjab. In the Punjab at the time of marriage so much is given to the daughter in dowry. If you go to any wedding function in the Punjab—to the rich man's place—you will find the dowry consists of thousands of rupees. So far as self-acquired property of the father is concerned, since the last 50 years our High Courts have made a change. Before 1909 the daughter did not even get a share in the self-acquired property

of her parents. Now if there is no son, the daughter succeeds to the self-acquired property among all the people. But I do regard that this is not sufficient justice with the women of our country. I want that so far as the unmarried girls are concerned they may get as good a share as the son does—I do not want to give her just a half. So far as the married daughter is concerned I want that she should be entitled to inheritance, along with her husband, to her father-in-law's property. That is to say, as soon as a marriage is performed, the husband and wife must unite their properties also and you can frame rules by virtue of which a married lady gets full rights of property.

I do not want that the ladies of this country should not get full rights, but I do not understand why a lady should get a right in her father-in-law's property as well as in her father's property. To that I object. I want that our notions of society and family should not be rudely shaken. At present, the son is the pivot of the family. He continues the family. The woman goes to another family and becomes the nucleus of that family. Let this continue. Unless and until our whole notion of society changes, my humble submission is that we should not change it abruptly, because this change will be great that ultimately the ladies will lose on both sides. At the time of marriage, the sons will say, " Why give her so much dowry ? She is going to get inheritance ". At the time of the inheritance, the father will fall on the lap of the sons and they will get some deed or will by which the daughter will be deprived. Both ways, the woman will get nothing. This will not be a fair way of treating women.

When you ask us, the people to whom this Bill will apply, I would certainly submit that if you want to have this Code in such a manner that you do not respect our wishes and our customs which have been in existence for the last several centuries, if you want to create such a conflict, then ultimately we shall have to say, " You kindly leave us to our own fate ". This is my humble submission. Though I am in favour of the good provisions of this Bill, I would very humbly request Dr. Ambedkar and those others who are very much in favour of it to kindly see that our wishes in this matter are respected and we are allowed to have such customs or such provisions of the law as the majority of the people in our particular province want. This is, in essence, what we have given an amendment about in regard to Part I of the Bill.

Shri Tyagi : How will the majority view be obtained ?

Pandit Thakur Das Bhargava : In the Punjab, the majority

view is clear. You go to any village or town and ask any person who will be affected by the Bill; he will tell you exactly what I am submitting today. There is absolutely no difference of opinion, so far as Punjab is concerned. Therefore, my humble submission is that while you apply this law to Punjab—and I wish this law to be applied to Punjab— you apply it with these reservations. This law is not bad, it is entirely wrong to suggest that there is anything inherently wrong about it. There is nothing wrong about it. We have lived for so many centuries and we must repair the damage done to our nation. Therefore. I am entirely in support of this Bill, but if the notions and customs which are widely prevalent among the people and which are very delicate are upset, there will be such a great amount of litigation in the Hindu society. Every family in Punjab will be affected. There will be nothing but litigation. You are, in deference to public opinion bringing in a provision of the Partition Act. What will be the result? On every death, the question will be: " Let us see how we evaluate the property of the father ". The property will be evaluated and the sons will not have sufficient funds to buy off the daughter's share and trouble will ensue. I am speaking from my experience as a lawyer for more than forty years.

Pandit Krishna Chandra Sharma: You have been working in the criminal courts.

Mr. Deputy Speaker: Hon. Members will address the Chair.

Pandit Thakur Das Bhargava : I for one have very great regard for my friend, who is also a criminal lawyer. All the same, my notions of a criminal lawyer are quite different from his. I have been practising on the criminal side as well as the civil side, but I take pride in the fact that I am a criminal lawyer. At the same time, I do not go about with my eyes shut. If a criminal lawyer is true to the description which my friend has in mind, he should know what is passing on in society. As a criminal lawyer, my friend should know what is passing on in and around Meerut, and when I am speaking about Meerut—I do not know what my friend's personal notions are—I know the conditions in Meerut and I know also that they are not very different from the conditions in Hissar and Rohtak. Therefore, when I speak for Punjab, I also speak for my Friend and Meerut side, because in olden times Meerut was a part of this side of the Punjab.

Pandit Krishna Chandra Sharma : For my friend's information, I may say that Hissar is famous for bulls while Meerut is famous for cows.

Shri Tyagi: May I know what have bulls and cows to do with the Hindu Code?

Mr. Deputy Speaker: Hindu Code relates to marriage, you see.

Shri Raj Bahadur: May I know whether cock and bull story is permitted in the House ?

Mr. Deputy Speaker: Order please.

Pandit Thakur Das Bhargava: When you refer to the question of marriage, I must submit that the introduction of the principles of civil marriage in this Hindu Code is another point which must be considered specially by this House. If this is a Hindu Code, why bring in the civil marriage ? I want that the provisions in regard to marriage may remain as they are. There is no use repeating them here. If you want to make a Hindu Code which will not apply to other people like Musalmans etc. then do not bring in civil marriage here. If any Hindu wants to marry in that manner, he will marry according to the civil contract to which the Muslims, Christians and everybody has recourse. That is our joint Civil Code. Therefore, my humble opinion is that this affair of the civil marriage should not be included here.

I do not want to refer to all the provisions of this Bill. I have spoken because I thought that we should at this stage define our attitude and tell Dr. Ambedkar what we feel about this Bill and what is perhaps the general feeling in the country. This Bill is not bad, and since we have decided that we should proceed with it, we may pass such provisions of the Bill as are good. In regard to those provisions. I do not want to stand in the way or adopt an attitude which smacks of dilatory tactics or which shows that we 'do not want the Bill to be passed. I want to make this point clear because it may be in the minds of many people that those persons who make long speeches do not, as a matter of fact, want this Bill to be passed. That is entirely wrong. So far as I am concerned. I want the Bill to be passed but I want those who are very much in favour of it to kindly see that such provisions are not passed as are in very great conflict with the notions and customs of the people.

Sardar Hukam Singh (Punjab): Sir, I sympathise with the attitude of my hon. Friend Pandit Thakur Das Bhargava. What I understood him to say was that he wishes the Code to be passed but he does not wish that it should apply to him and the other people in his part of the country. Really, I have the same thing to say. I also wish that the Bill be passed, but that it should

not be applied to me. I wish I could have made a similar motion and it should not have smacked of a particular community but what I found was that the application of the Code was not to certain territories but to certain communities. Therefore, I thought it fit to move this amendment that it should not apply to the Sikhs.

Sir, I am not one of those who wish the society to stagnate. I believe in progress and I want to move with the times. I can claim that the Sikhs are a progressive section of the society. But why I do submit to the House that the Sikhs should be excluded from the application of this Code is because it contains certain provisions which are offensive to the customs and usages that we have been following for so many centuries.

Panditji made a reference to the proviso to sub-clause (2) of Clause 2 which reads:

" Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code had not been passed, then, this Code shall not apply to that person in respect of those matters. "

What I understood him to say was that perhaps this might save the custom and usage prevalent in the Punjab. But I differ from him, because sub-clause (2) reads:

" This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion; "

and read with this sub-clause, the proviso does not refer to the custom or usage of the Hindus or Sikhs. Therefore, in my humble opinion this would not save the custom or usage and I, therefore, do not entertain his hope.

Pandit Thakur Das Bhargava: I never said that this proviso would save our customs or usage. What I meant was that if it is proved that we are not governed by the Hindu Law—the words are, " provided that if it is proved that such person would not have been governed by the Hindu Law "—Punjabis would not be covered by this proviso. But our customs and usage will not be saved. It applies to all the Hindus. What I meant was that, as a matter of fact, our customs and usage should be saved by another provision which should say that we are allowed to be governed by our own customs, etc. But this proviso will introduce a certain amount of uncertainty.

Sardar Hukam Singh : Sub-clause (1) of Clause 2 definitely

lays down that the Code will apply to Hindus, Buddhists, Jains, Sikhs and also converts to Hinduism.

Therefore, so far as I am concerned, there is no ambiguity at all. Be that as it may Panditji no doubt agrees with me to this extent that our custom and usage would not be saved at any rate.

Sir, if a uniform Code had been attempted for all the citizens of India, then perhaps I would not have stood up and raised this objection, even if I had been called upon as a Punjabee to make some sacrifices. I would have made sacrifices in the hope that if we can grow up as a united nation, as one people, certainly some sections will have to make some sacrifices. But that is not the object here. No attempt is being made to weld all people into one nation by this Code. There is discrimination between one community and another. Therefore, I think I am perfectly justified in opposing it.

I should however make it clear here that so far as some Chapters of this Bill are concerned, I am in complete agreement with them. I am only opposed to three portions of it. If different parts had been put before the House separately, certainly I believe that most of it would have been passed without any controversy. But as it stands we have to take them as a whole and, therefore, I stand up to oppose them, because I cannot permit them to be passed without my voice being heard.

The provisions to which I am opposed are (1) those relating to marriage and its dissolution by divorce, (2) adoption and (3) inheritance. (*An hon. Member* : What is left then ?) Much remains even then. It has been said by Panditji that it applies to those persons who were already governed by Hindu Law. This is correct. But if we have consented to be governed by Hindu Law, that does not necessarily mean that we should be compelled to revolve round the wheel even though it goes into foreign spheres and borrows certain things from other religions and other laws simply because I have once been dragged into it. I should not be compelled to revolve round it, though it does not remain within its own sphere.

Then again. Sir, there is a misconception. The Hindu Code Bill says that the Sikhs are governed by Hindu Law. Now section 5 of the Punjab Customary Law—which has already been quoted by my hon. friend Pandit Thakur Das Bhargava says:

" Custom in this province is the first rule of decision in all questions regarding succession, special property of females, betrothal, marriage, divorce, dowry, adoption, guardianship,

minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution, or alluvion and diluvion. "

Now I ask : When I am governed on all these subjects by customary law, where is the Hindu Law that governs me ? I find that there is one subject that is not put down as such, namely, maintenance with which this Hindu Code deals. It is not put down in the Customary law that I am governed by the usage on that subject also.

3 p.m.

I was submitting that I have three subjects on which I have certain objections and the Sikhs do not wish that they should be forced to be governed by the Hindu Code that is being proposed here in respect of them. First I referred to marriage and the dissolution and divorce connected with it.

[MR. SPEAKER IN THE CHAIR]

Sir, so far as the Sikhs are concerned they have a very simple form of marriage. We might call it sacramental or *dharmic* marriage. It is known as *Anand marriage*. It is a simple and secular form of marriage. The couple sit down in the presence of the *Gum Granth Saheb*, they take a vow that they will remain united for ever—so long as they are alive, of course—and prayers are offered. Of course I might be confronted with this that this would be covered, and that it is not touched by the Hindu Code. But there are some implications which I am afraid would really affect me. There are certain degrees of relationship which are prohibited from marrying each other and these are strictly observed in all civilised societies. But so far as our society is concerned the list is not very large. Marriage between cousins has often been allowed. There have been many instances of marrying father's sister's daughter or mother's sister's daughter and they have not been considered as within the prohibited degree. And I tell you that you are driving your society towards that direction. We are far ahead of you. You are coming to that way. Do not be surprised at that. Now that you are proposing to give a share to the girl you are sure to come that way. You will have to march towards .that direction.

An Hon. Member: What about Sikh Jats ?

Sardar Hukam Singh: What I am submitting relates mostly to Sikh Jats. The custom that I am talking of prevails mostly in Jats and Jats observe that. Ninety per cent of the Sikhs are agriculturists and live in villages.

I was asking now that you propose to pass this legislation, by which the daughter shall have a share. Here I might make my position clear and nobody need feel perturbed. I am for a share for the girl. I am not opposed to it. But when you proposed that, you will have to take the risk that this long list of prohibited degrees shall continue diminishing and shall contract as time passes. I suppose the present list is not as long as it used to be under the strict Hindu Law. And it is sure to contract as time passes.

Shri Tyagi: It will come nearer home.

Sardar Hukam Singh: Surely. You cannot keep the two things apart. When you take this from the Muslim law you will have to permit cousins and other near relations to be outside the prohibited degrees. There is no doubt about it. Be prepared for it. You will have to march near it. You cannot keep away from it.

Now that you are asking me to come in, that I should have this *dharmic* marriage, the implication would be that these prohibited degrees would be there. While there is freedom for me to marry such relations as I have described, this would create a ban on me. And it would not be only for the future. There have been so many such marriages and all of them would be invalid. Though you have provided in clause 21 that I can get my marriage, my *dharmic* marriage, registered as civil marriage, but think of the instances and their number. We shall have to run to the courts or to the Registrar to get them validated. Do you want me, an old man, to get my marriage registered now ?

Dr. Ambedkar: Do you want to marry again ?

Mr. Speaker: Order, order.

Sardar Hukam Singh : This Code would create a doubt because the girl that I might have married might, according to you, be within the prohibited degrees. What would happen then ? I enquire from the Hon. Minister what would happen to that marriage.

Shri Tyagi: And to your children also.

Sardar Hukam Singh : Yes, certainly. They will be " illegitimate " unless I get my marriage registered as a civil marriage now, at this age! And the Hon. Minister wants all those persons now, at this advanced age, to run to the Registrar and get their marriages registered as civil marriages.

Shri Tyagi: As he has done himself!

Sardar Hukam Singh: Then again there is a marriage that is usually known amongst the agriculturists of my part as *karewa*

marriage or widow's marriage. No distinction is made in the present Code as regards that. What will happen to that marriage, because we will have either the sacramental or *dharmic* marriage or the civil marriage— nothing beside it. The simple manner in which the *karewa* marriage is performed might look peculiar to some hon. Members here. There is no ceremony: it is a secular institution altogether.

The man and the would be wife sit together, a *chaddar* is spread over them and sweets are distributed and they become husband and wife. I do not think. Sir, the Hon. Minister can point out to me any provision by which such marriages would be recognised. He is making this Code more cumbersome. . . .

Pandit Thakurdas Bhargava : If it is a bigamous marriage then difficulty will arise.

Sardar Hukam Singh: May I enquire with your permission from my hon. Friend what form of marriage would that be. Would that be a *Dharmic* marriage without any ceremony. *(Interruption)* I do not agree with him and that would not be a *dharmic* marriage. Anyhow, I do not want to enter into a controversy here.

I come to my next point, that is, adoption. What I am going to say might look somewhat surprising to some of my hon. Friends and in this respect also I claim that we are much in advance of the rest of the country, so far as this adoption is concerned.

Dr. Ambedkar: You are always in advance of everybody.

Sardar Hukam Singh : I will tell you just now and then you would agree with me that we are much in advance on that subject too. As has been just pointed by my hon. Friend, Pandit Thakurdas Bhargava, it is the customary appointment of a heir. It has nothing to do with religion. There is no horror of incest. We are not eager to create sons to offer us *pindas*.

Shri Hussain Iman (Bihar): Are there *Pindas* ?

Mr. Speaker: Let him proceed further.

Sardar Hukam Singh: We do want that we might have a heir to succeed to the property.

Dr. Ambedkar : Why do not you allow the property to go to the State ?

Sardar Hukam Singh: Then it might go to the Hon. Minister and that we do not want to do. Therefore, this is a most secular institution. There are no restrictions as to the age, caste or any ceremonies. A simple declaration is there and perhaps it was observed, last time too I made a remark that a man can adopt another older than himself. The adopter might adopt a man of

his father's age. There is no harm in that; he might be married and he might have several children. This institution you would not find anywhere. I fail to understand. Sir, if all these usages and customs are effaced, what is going to happen to these institutions, to these customs that we love very much, these traditions to which we have been accustomed for so many centuries.

Then, Sir, I would cite another peculiar instance, which might interest some of my hon. Friends and I invite the attention of the Hon. Minister particularly to this point.

Mr. Speaker: The hon. Member may proceed with his speech.

Sardar Hukam Singh : I wanted the Hon. Minister to pay attention to a subject which is very interesting.

Mr. Speaker: Order, order.

Dr. Ambedkar: I have been asked to introduce the Gandharva marriage. It was that which I was discussing.

Sardar Hukam Singh: I have no objection if our Chief Whip wants it. Then, Sir, I was submitting another interesting thing about adoption which the other parts of the country perhaps do not know altogether. I know of instances where girls have been adopted. They have been made heir to the property and they have succeeded. Custom has allowed them and recognised them. I humbly request you Sir, to say whether with the introduction of this Code, all these traditions, all these customs and usages are going to be thrown away to the winds. Is the society that has been built going to chaos now ? I believe that the laws should reflect the stage of advancement of society, the progress that it has made, not that a target be fixed and then the society be pulled up to reach that target. It was tried in Turkey but it failed there also. I request this Government to go slow. There must be cases on the extremes on both sides and I believe there are hardships now in certain cases, but you cannot avoid this. There would be such cases even if this Code is passed. I again stress that ' adoption ' is a 'very old institution which is so dear to us and we cannot afford to lose it even though this Code may be passed.

Then the third thing to which we have serious objection is about inheritance. As I observed a few minutes ago I am not opposed to give a share to the girls. I rather believe that this discrimination is only on account of the sex, that she should not get an equal share. It was remarked that it is not only on sex, but I think it is only on sex that she is not being given an equal share with her brother. Otherwise, there is no reason if they are

off-springs of the same parents. I ask, why she should not have an equal share. I say on that ground alone, she must have an equal share. My objection is not on that account. What I submitted last time as well—perhaps it was on the 14th December 1949—that I would prefer that she should have an equal share in her parent's property so long as she is unmarried and she should have an equal share with her husband as soon as she is married, in her father-in-law's property. She must have a share. This should not disturb the present society and structure. We have peculiar circumstances. I believe this Code would not apply to lands but certain.....

Pandit M. B. Bhargava (Ajmer): It will now. The official amendment is there.

Sardar Hukam Singh: Sir, Punjab is a State of smallholdings. Already they are uneconomic. Another thing is that we have smaller number of females than males in the Punjab.

Dr. Ambedkar : Therefore, their value is great.

Sardar Hukam Singh: Yes, Sir; you are going to increase their value but not to look to other things. That value can be, I should say, adjusted. As I said the number is already fewer. It is well known that some time back people did not like that they should have sons-in-law and there were female infanticides. I tell you honestly and not as an argument that you would encourage that again, if you give a share, because that landholder feels that he has already got an uneconomic holding, a pair of bullocks and a cow. It is not possible for him to part with those animals, which are so essential for his cultivation. It is no answer to say that if a father had another son, how could he have dealt with him, he must have got a share. We are insisting that there should be a definite list of prohibited degrees, and we want to give the daughter in marriage outside that list. That is to say, a stranger would be brought in. He would not live there; he cannot associate himself with the environments. What he would do is to part with his share as soon as he marries the daughter. There are dissensions in every village; there are parties in every village. The friends would not buy the property; but the share would be sold to the enemy. This would create quarrels, murders and affrays.

Shri Tyagi: He is right.

Sardar Hukam Singh : I pray, kindly, do not bring this into the Punjab. Otherwise, you would create confusion and disorder there.

Shri Syamnandan Sahaya (Bihar): What faults have the other provinces done? Why not plead for them also?

Mr. Speaker: Order, order; let us proceed.

Sardar Hukam Singh: I thought that if I advocated their cause, somebody might question my authority and representative character. Therefore, I confine myself to my own province, and particularly my own community. Otherwise, just as I said at the beginning, I wanted that I should represent the whole of my province; I feared that I might be questioned.

I was submitting that that would create confusion and disorder and the whole society would be upset. That is not what is intended by this Code. That would not be progress; that would not be advancement, but would be rather a retrograde step. Therefore, so far as we are concerned, do not pull us back. Let us go on. You should consider us to be in the vanguard and follow us as we go further. That would be better perhaps for us, for the whole country and for all concerned.

There is another thing that I wanted to submit.

Shrimati Durgabai (Madras): Sir, may I ask a question?

Mr. Speaker: It would be better that the hon. Member is allowed to go on without these arguments and counter arguments, if we really want to progress with the matter. All that I would earnestly appeal to all the Members is to be very attentive to the arguments advanced instead of putting questions at each stage. It is better that hon. Members hear all what a gentleman has to say and then advance their arguments. I am going to give full chance to all people who want to speak.

Shrimati Durgabai: I am just asking a question. Sir,....

Mr. Speaker: Whatever that may be, let us allow the members to have their say. Otherwise, there are these interferences, these attempts to draw replies—I am noticing it, there are constant interferences notwithstanding my appeals not to interrupt—with the result that not only is the link of the speaker's argument broken, but more time is taken, and I do feel that even the seriousness of the debate is being lost. We are here legislating on very vital matters. Let us, therefore, seriously and anxiously hear whatever every member has to say, instead of passing remarks or putting questions, just by way of explanation or drawing explanation on particular words. Let us be patient with the speaker.

Sardar Hukam Singh: Then, Sir, I come to my last point, and that is rather painful. I want to bring it to the notice of the House that the Sikhs have already certain apprehensions; some might

say that they are unfounded. Whatever it may be, we have this apprehension that there is an attempt to absorb the Sikhs and efface their traditions and culture

Several, Hon. Members: No. no

Sardar Hukam Singh: . . .usage and custom. They have certain grounds. They have always complained that they have not been fairly treated. One instance that they have cited is that while it was being announced that they are an integral part of the Hindus, when the President had to make an order about Scheduled Castes they were kept at a respectable distance. Under a recent Order of the President 34 castes have been declared as Scheduled castes provided they profess the Hindu religion. Only four castes, and that at the expense of all the safeguards that we wanted were allowed to be classed as Scheduled Castes if they profess the Hindu or the Sikh religion. We have that complaint that whenever there is a chance to confer some benefit, then, we are not included or brought near and we are kept at a distance. But when there is nothing to be given, but only these usages and customs and traditions are to be effaced, we are offered an embrace, an empty embrace that might, rather, I should say, not be pleasant to us, because we love these customs and these traditions. We have adhered to them for a very long time. Therefore, I pray in all earnestness that we might be excluded from the sphere of this Bill.

Pandit Thakur Das Bhargava : With your permission. Sir, I want to put a question, in respect of the last point of my hon. Friend. Is it not a fact that the Sikhs themselves came to Sardar Patel and agreed that only these four castes should be included among the Scheduled Castes and no others ? If that is true, if that is according to agreement, my hon. Friend is not entitled to raise this grievance here.

Sardar Hukam Singh: It is a long subject. The Revered Sardar himself put in these words that these four tastes could only be acknowledged, if the Sikhs gave up all the safeguards that they wanted. It was at the sacrifice of those things that these four castes were acknowledged, and they too only in two provinces, the Punjab and the PEPSU. They are not Scheduled Castes in other provinces.

Pandit Thakur Das Bhargava: That is according to the agreement.

Sardar Hukam Singh: No. Mr.

Speaker: Dr. Ambedkar.

Shri T. N. Singh (Uttar Pradesh) : Is Hon. Minister's speech

going to be in reply ? Several Hon. Members: No, no.

Dr. Ambedkar: Sir, I propose first to deal with my own amendment before I deal with the other amendments that have been tabled to this clause.

It will be seen that in the amendment which I have moved there are three specific points. The first point is that I propose to omit the word professing which occurs in sub-clause (1). The reason for omitting this word is that it has been felt that probably today as the Hindu society is composed, there are people who are Hindus, but who do not profess the Hindu religion in the theological sense in which the word ' profess ' is used. In former times one could give the illustration of the Brahmo Samajists in Calcutta or the Prarthana Samajists in Bombay, two sects which were formed from out of the Hindu community, which openly declared that they did not profess the Hindu religion. As my friend Pandit Thakur Das Bhargava observed in the course of his speech there are many Hindus to-day who, so far as religion is concerned, prefer to adopt an eclectic attitude. They like to have something from some religion, which appeals to them, and to that extent they are prepared to abandon the religion of their ancestors. If, therefore, the word " profess ". remained in this context, it would be open for anybody to argue that unless it was proved that a particular individual was a professing Hindu this Code would not apply to him. That certainly is not the intention of the Code. The intention of the Code is that it should apply to every person who belongs to the Hindu faith. I prefer the use of that terminology and it is therefore, to do away with any such ground for an objection founded upon the word " profession " that I propose to delete it.

My second amendment relates to clause (d). Clause (d) as it stands, says that this Code shall apply to a convert to the Hindu religion. Now, as the house knows, we are using the words " Hindu religion " in a very broad sense; not in the limited sense in which it would apply to a person who believed in the *Vedas*, who believed in the infallibility of the *Vedas*, who believed probably in the *Chaturvamas*, and who also believed in the performance and the sanctity of the *yagnas* as a means of salvation. We are using the word in a large sense, to include also Buddhists, Jains, Sikhs etc. who do not believe in these dogmas. Consequently, if clause (d) remained that the convert who is referred to in sub-clause (d) is the convert only to the Hindu religion in the limited sense of the word. In order to do

away with that contention. I propose to use the new phraseology—"convert to the Hindu religion, Buddhist....." and so on and so forth.

My third amendment deals with the deletion of sub-clause (4). As the House will realise, this sub-clause (4) did not exist in the original Bill as it was placed before the House at the time of the first reading. This clause was introduced in the course of the proceedings of the Select Committee. The idea of those who sponsored sub-clause (4) was this. It was their view that since the intention of the Code was to bring all Hindus under all denominations under the purview of this Code, there was no purpose in setting apart those Hindus who had already performed their marriages under the Special Marriage Act of 1872. It was for that reason to make the Bill all inclusive, that this sub-clause (4) was brought in. I have however found that there is one point which was, I am sure, not present to the mind of the Select Committee when they introduced this clause. It is quite obvious that if sub-clause (4) remained and it applied to persons who were married under the Special Marriage Act of 1872, they would, in the matter of succession and inheritance be governed by the present provisions contained in this particular Code. Now, anyone who is aware of the provisions contained in the Succession Act with regard to inheritance and the provisions contained in this Bill will have no doubt that so far as women are concerned, the provisions of the Succession Act are far more liberal than the provisions contained in the present Code. It does not, therefore, seem right that people who have already married under a particular law and have on that account, become entitled to the more liberal provisions contained in the Succession Act should be dragged down and brought under the present Code which as I said, contains provisions relating to inheritance which are somewhat illiberal as compared with the other provisions. It is for that reason that I propose that sub-clause (4) should be omitted.

Now, Sir, I will turn to the points made by the critics of clause (2). Examining the amendments that have been tabled, I do not find any difference between myself and my friend Pandit Thakur Das Bhargava. His amendments is, more or less., the same as those contained in clause 2. I will presently explain why I have in my draft, named certain communities which he thinks is unnecessary. With regard to the other amendments, one can see that there are really three points which the amendments seek to make. One is this that there is no necessity for a Hindu

Code at all. What is necessary is a Civil Code applicable to all citizens. That is one point of view which is adumbrated in the amendments. The second is that this very Code which is placed before the House and which, according to its terms, is intended to be confined to the Hindu community should be made applicable to non-Hindus, such as Muslims, Parsis, Jews, Christians and so on. That is to say, it should itself be regarded as a Civil Code. and the third suggestion is that the application of the Code should be voluntary. It should be a matter of choice either for any particular citizen or any particular member of the Hindu society to go before a magistrate and to register his will that he would like to be governed by this particular Code. In no other circumstances should this Code be made applicable in this country. And I believe there is one suggestion—1 forget now the author of that suggestion—that this Bill should not come into operation except on a referendum to be taken after the elections or something like that.

Pandit M. B. Bhargava: That comes up later.

Dr. Ambedkar: Somebody said that, I cannot recall who.

Shri J. R. Kapoor: He intends to say so later on.

Dr. Ambedkar: Yes.

Now, I must say that I am very very much surprised to see some of those who until yesterday were the greatest opponents of this Code and the greatest champions of the archaic Hindu Law as it exists to day should come forward and say that they are now prepared for an All-India Civil Code. There is a proverb that a leopard does not change its spots and I cannot believe that those leopards which have been pouncing upon this Bill every time I came before this House have now suddenly so reformed their mentality as to become revolutionary enough to accept a new Code altogether. If they want a Civil Code, do they think that it will take very long to have a Civil Code ? Probably the underlying motive why they have made this suggestion is this. As it has taken four or five years to draft the Hindu Code they will probably take ten years to draft a Civil Code. I would like to tell them that the Civil Code is there. If they want it can be placed before the House within two days. If they *are* ready and willing to swallow it, we can pass it in this House in half an hour.

What is the Civil Code ?—let me ask. The Indian Succession Act is a Civil Code. Unfortunately it does not apply to Hindus. I do not know if there is any person with the greatest amount of legal ingenuity who can devise a better Civil Code than the Indian Succession Act. All that would be necessary to make the

Indian Succession Act universal and civil, that is to say, applicable to all citizens, would be to add a clause that the words contained in clause 2 of the Act, namely that it shall not apply to Hindus, be deleted and then you can have a Civil Code tomorrow. If you want the marriage law as part of your Civil Code there again the text is ready. The Special Marriage Act is there. All that you have to do is to remove the words that it shall not apply to this or that it shall only apply to that. All that you have to say in clause 2 is that it shall apply to all citizens and there is an end of the matter. I want to know whether those who have made this suggestion have done it with a serious intention and pious purpose of really having a good law on these matters.

. .

Shri Sondhi (Punjab): Take them at their word.

Dr. Ambedkar : I am not prepared to do it, because I know them very well. That is the reason why yesterday I did not accept the suggestion of my friend Mr. Rohini Kumar Chaudhary. He said, " Adopt whatever measures and either take the Code through or if you cannot take it through, keep it to the end." I could have accepted the word and the suggestion of my friend Mr. Rohini Kumar Chaudhary if I could believe and trust him or that he will not have any opposition if I adopted the course that he suggested. I now find that he has been completely isolated. Some of his friends who were walking with him and forming a solid front, I find have now fallen away. They have seen light and they are prepared to support the measure in some parts, if not on the whole. Therefore, this idea of having a Civil Code just does not appeal to me, because I do not think there is either much firmness behind it or, I was almost going to say, seriousness behind it.

With regard to the plea that this Code should be applied to all citizens, I think my friend Pandit Thakur Dass Bhargava has replied to the critics who have made this suggestion and I do not think I can improve upon what he has said . I do not know that those who made this suggestion could be regarded as so ignorant—1 was almost going to say so foolish—as not to realise the sentiments of different communities in this country ? It is all very good to say that we have proposed in our Constitution a Secular State. I have no idea whether any Members, when they use these words " Secular State " really mean what the Constitution is intended to mean. It does not mean that we can abolish religion: it does not mean that we shall not take into consideration the religious sentiments of the

people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the Constitution recognises. We are not here to flout the sentiments of the people.

Babu Ramnarayan Singh: You are doing it.

Dr. Ambedkar: I am not doing it at all, as I will show you. "Therefore, it seems to me that it is a suggestion which really lacks even common-sense and I do not therefore propose to deal with it.

Now in regard to the other question that the Code should be made voluntarily applicable. I think this is a very dangerous suggestion. What does this suggestion mean ? It means that this Parliament is only a body to recommend a certain thing. All that the Parliament can do, if we accept the suggestion is to say to the people outside. " This is a law we have passed. We think it is good. Gentlemen, it is for you to say whether you will accept it or not. " If that is the position that we are going to adopt and if we accept this principle now, we shall be setting a precedent and there will be no end to such recommendations that may be made by Parliament, namely that much of its legislation should be left to be passed by people outside on a referendum. I do want to say that this Parliament is a Sovereign Parliament. Beyond seeking the mandate of the people it has no obligation to the people to obtain their consent. It can decide what it likes. It is supreme: It has authority to make a law, to unmake a law. If every time this Parliament is to be subjected to the vote of the ignorant people outside who do not know the A.B.C. of the technicalities of the law, this Parliament will have to be suspended: it would be much better not to have a Parliament at all.

Secondly, I have not seen any single example in the history of the Legislative Assembly of this country of such a course being recommended to Parliament. This is not the first time that Parliament is passing a law dealing with Hindu Law. I have made a modest computation of the laws passed by the Indian Legislature ever since legislative power began to be exercised, practically from 1833. Altogether 29 laws have been passed, some of them of a very drastic character making fundamental changes, but there never was any plea in this House that any of those laws should be left to be passed and sanctioned by public opinion or public referendum. (*An hon. Member* : They were not elected legislatures). It is worse still. Even when the legislatures

were not elected legislatures, they exercised the law-making power and imposed it upon the people. Now when the legislature is far more representative than it ever was a plea is made that this Parliament cannot make a law for the people.

An Hon. Member: Nobody has said that.

Dr. Ambedkar: That is what some hon. Members suggested when they said there should be a referendum.

Now, I will go back to some of the comments which were made on the draft of clause 2. These comments were made particularly by my friend, Mr. Naziruddin Ahmad, and my friend Pandit Thakur Das Bhargava. Yesterday you were not in the Chair, Sir, but . . .

Prof. Ranga (Madras): But the Chair was there.

Dr. Ambedkar : The Chair was there. What I wanted to say was that Mr. Naziruddin Ahmad started in a very accusing mood. He tried to prejudice the House against me by saying that the language of my amendments was mandatory : " *substitute* this ." He thought that the more polite way of putting down amendments was to say, such-and-such words shall be substituted for such-and-such words ". Really speaking, I need not have taken this point seriously because drafting is not my business—drafting is the business of another body of people who have their set rules of drafting and I could have very easily said that I am not responsible for it. But I did make enquiry into the matter whether the draftsman in using the language which he has used had really fallen from grace or from the usual standard. The facts are these. For instance, the formula suggested by Mr. Naziruddin Ahmad that is, " such-and-such a word shall be substituted ", I found is generally used when you draft an Act. There seems to be a distinction between the language adopted in drafting an Act and the language to be adopted in drafting an amendment. Therefore, as the draftsman was drafting the amendments he did not use the usual formula which I said is used in drafting an Act. The second thing is this. As the House will remember, the President has issued certain orders under the Constitution which he is entitled to issue. In that series of orders—I think it is a very fat book which some of my hon. Friends must have seen—the language that is used is the language which the draftsman has used in these amendments. He says, " I have followed the precedent which has been adopted by the President, in making these amendments ". I went further and enquired, " Why did the President depart from the usual practice "? And the answer

given was that the orders were so bulky that it was necessary to economise in printing paper and ink. Therefore, the draftsman who helped the President in framing his orders followed this particular way of putting these amendments. My draftsman, therefore, has really committed no error, no fault, in following the precedent adopted in the Constitutional orders. I, therefore, submit that my learned friend's attempt to depict me in rather unsavoury colours has fallen to the ground. I will not deal with that further.

Now, my friend's objection was to sub-clause (d). He said that I am hoping in the convert to Hinduism. His point, if I understood it correctly, was that I have made no provision either here in clause 2 or in any other part of this Bill to have the rights of the convert in the family in which he was born. I must say that my friend, Mr. Naziruddin Ahmad who legitimately claims a very extensive knowledge of law should have forgotten that there is a very old Act called the Disabilities Removal Act of 1850 which was passed just for this very purpose namely, to remove any disability from a person who wants to change his religion in order to safeguard what is called liberty of conscience. It was an Act which was passed on the agitation of the missionaries in this country who found that the Hindu were not prepared to change their religion because under the ancient Hindu Law a man who went out of the Hindu fold was a *petit*—a *petit* could not inherit property. In order to do away with that rule of Hindu Law this particular Act was passed and I have done nothing to abrogate the provisions of the Act. If my friend had referred to the Schedule which deals with the Acts which are repealed by this Code he would have found that the Caste Disabilities Removal Act is not included in that Schedule. Therefore, the convert will retain all the rights of inheritance in his father's family if he wants to change his religion. And therefore Mr. Naziruddin Ahmad's complaint is absolutely groundless.

My friend said he had an objection to sub-clause (2). Sub-clause (2) says-

" This Code also applies to any other person who is not a Muslim, Christian, Parsi or Jew by religion ".

4 p.m.

Obviously this sub-clause (2) is what I call a residuary clause, a clause which refers to the balance of people who are not included either among Hindus who are specifically mentioned or the Parsis, the Jews, the Christians, or the Muslims. There can

be no doubt about it that there are in this country a vast number of people who do not follow any of these recognised religions, so to say. What are we going to do about it ? Certainly this Bill either should say that it does not apply to them or it should say that it does apply to them. And if it said that it does apply to them, it should say to what extent it applies to them. Everybody knows that there are in this country a vast number of people such as, for instance, the Adi Dravidas, the tribal people, the jungle tribes, the backward classes, the animists, and so on and so on—one can go on enumerating *ad infinitum*. What about them ? Surely some provision must be made for them. Sub-clause (2) therefore applies to this class of people whom I called a residuary class. Now, it might be said that in making this Bill the Government has a political motive, namely, to absorb these non-descript people into the Hindu community so to say, by a side door. That is not our purpose at all, because you will see from the proviso what we are doing.

The Hindu Code will apply to them only if it is proved that Hindu customs and Hindu usages are prevalent in that class; otherwise, they are free to do whatever they like. There, again, the criticism of my friend was quite misplaced.

Prof. Ranga: Can they opt themselves out ?

Dr. Ambedkar : Once they have adopted the customs and so on, they are in; otherwise they are out.

Now, Sir, I will deal with certain points that were raised by my friend Pandit Thakur Das Bhargava and by Sardar Hukam Singh. Sardar Hukam Singh's amendment is that it should not apply to the Sikhs. Later on, I suppose, he moderated his attitude and said that he had only objection to some parts. With regard to the question whether this Bill should apply to persons or communities other than Hindus in the strict sense of the word, I think it is desirable to have some general idea about the matter. The first thing that I would like to emphasise and which I would like Members of Parliament to bear in mind is this, that from a sociological point of view the variety of religions that we have in India or elsewhere seems to me to fall into two categories. There are religions, which have as their part a legal system, which you cannot sever from those religions. There are religions, which have no legal system at all, which are just pure matters of creed. The peculiarity about the Hindu religion, as I understand it, is this, that it is the one religion, which has got a legal framework integrally associated with it. Now, it is very necessary to bear this thing in mind, because if one has a

proper understanding of this, it would not be difficult to understand why Sikhs are brought under the Hindu religion, why Buddhists are brought under the Hindu religion and why Jains are brought under the Hindu religion. When the Buddha differed from the *Vedic Brahmins*, his difference was limited to matters of creed. The Buddha did not propound a separate legal system for his own followers; he left the legal system as it was. It may be that the legal system that then prevailed was a good system; that it had no blemishes and no faults. So, he did not direct his attention to making any changes in the legal system in consequence of the changes that he introduced in certain religious notions.

[MR. DEPUTY-SPEAKER IN THE CHAIR.]

In the same way, when Mahavir founded his own religion he did not create a new legal system for the Jains. He allowed the legal system to continue and I think Sardar Hukam Singh will correct me if I am wrong when I say that none of the ten Gurus ever created a law book as such for the Sikhs. The trouble is—you may call it trouble; you may call it good fortune; you may call it misfortune; I am not particular about words—the fact is this. In this country, although religions have changed, the law has remained one. That is why the Sikh follows the law.

Sardar Hukam Singh: But now you are making a new law.

Dr. Ambedkar : It is a new thing now. The Jains come and ask, " What are you going to do to us? Are you going to make us Hindus? " The Sikhs say the same thing. The Buddhists say the same thing. My answer to that is this: I cannot help it. You have been following a single law system and it is too late now for anyone to say that he shall reject this legal system wholesale and will have nothing to do with it. That cannot be done. Therefore, the application of the Hindu Law and the Hindu Code to Buddhists, Jains and Sikhs is a historical development to which you and I cannot now give any answer. All that we can do is to say that the thing has gone wrong and change it, reform it or make it more equitable and this is what we are doing. So far as the Sikhs are concerned, I find from the judgements of the Privy Council that this question was debated much earlier than even 1830, when the decision was taken that the Sikhs were Hindus so far as law is concerned. Just count from 1830 to 1950—for how many years you have been regarded as Hindus for legal purposes!

Sardar Hukam Singh: It has not been doubted.

Dr. Ambedkar : In law, we have a principle which is called *stare decisis*—a decision taken a long time ago and on which people have gone had better be stayed although it is wrong.

Sardar Hukam Singh: You are going to change it now. What should I do?

Dr. Ambedkar : Now, Sir, with regard to the points made by my friend Pandit Thakur Das Bhargava. I was really very happy to hear his speech.

Shri J. R. Kapoor : No praise will bring him into your parlour.

Dr. Ambedkar : I have used no temptations. I now find that really he has been digging various trenches one after the other. He knows very well and I see from the last trench that he knows very well that he would not be able to defend the first trench or the second trench or the third trench. He has got a very small last trench which, of course, is concerned with ousting the married daughter and I think that if that point could be conceded his opposition would be extinguished completely.

He has raised other questions also with regard to customary law. I agree and I have examined this position with great care. The Punjab Law does show that certain matters relating to personal law shall be decided by customary law, but I also know and I think my friend Thakur Das Bhargava also knows that the customary law is Hindu Law really. I do not think that that proposition can be denied, namely, that what is called customary law in Punjab is Hindu Law. The reason why it was not called Hindu Law was because the same customary law prevailed among the Muslims, and the East India Company was frightened about using the words " Hindu Law " when the law was also applicable to the Musalmans. But these are merely differences of words. It cannot be said that Punjab is not governed by Hindu Law: Punjab is governed by Hindu Law.

Now his great point was that I was laying an axe on their customary laws in the province. Well, as I listened to some of the instances which both my friends Pandit Thakur Das Bhargava and Sardar Hukam Singh gave, I found that these customary laws were really not applicable in any sense. I would merely call their marriage laws marriage made easy, their divorce laws divorce made easy and their inheritance law inheritance made easy. There is nothing fundamentally different about it. Therefore, I am not going to discuss the question on this occasion,—what extent the customary law should be saved ; to what extent the Punjab should be excluded. But I want to make this statement that I should never agree to exempt any

province from the operation of this law. Let there be no doubt about it at all that the Hindu Code shall be a uniform code throughout India. Either I will have that Bill in that form, or not have it at all.

With regard to the second point as to saving customary law, I think that is a point that he could raise on the various clauses of the Bill where he wants to introduce the customary law, and if he proves that the deletion of the customary law is going to introduce any kind of hardship I shall certainly consider the matter with great sympathy. I want to make this Hindu Code as easy as I can possibly make it.

Shri Tyagi: As marriage in Punjab !

Dr. Ambedkar: Easy in the sense that I do not want any kind of hostility, or hostile camp against the Hindu Code standing out.

If my hon. friend sees clause 4 he will find that it does not altogether oust custom. Therefore, when any particular clause comes up for consideration, if my hon. friend considers that the existing custom in the Punjab should be saved from the operation of that particular clause and if he can make out a case for exemption, I have no doubt that the matter will be sympathetically considered. I do not intend to give a more detailed reply to that because I think it is quite outside the scope of this particular clause.

Shri R. K. Chaudhuri : *rose—*

Shri Raj Bahadur: May I know how many more members are there to speak on amendments.

Dr. Ambedkar: I suggest that this clause be disposed of today. We have spent two days on it and there has been more than enough debate on it.

Shri R. K. Chaudhuri: Sir, I claim the credit of being isolated in the matter of this legislation.

Shri Syamnandan Sahaya: The hon. Member can come to the front bench and speak.

Shri R. K. Chaudhuri : Will you let me sit there tomorrow during the question hour ?

I confess that in this House I am isolated. But I hope the Hon. the Law Minister will have the courtesy to admit—which is a fact—that he is completely isolated outside this House. I do not regret the position in which I am placed, because I find that hon. Members of this House are afraid of speaking out the truth of telling the hon. lady Members of this House what they ought to be told that they are proving themselves far too aggressive.

This, I respectfully submit, is not a matter to be laughed over. Hon. Members of this House would have noticed the way in which my revered friend Babu Ramnarayan Singh was squeezed out of his seat yesterday. It is only on account of the relenting heart of a certain lady Member that my hon. Friend has found his way to his seat.

Sir, I warn this House against this aggressive character of our women. I think it is time that we speak out. I want to ask the Hon. Minister for whom he is legislating this Hindu Code and who wanted him to push on and proceed with it against the wishes of a large section of Hindu Society. Is it not because the hon. Lady Members of this House have egged him on to do it?

I should, however, like to tell the Hon. Minister that he is not alone in that predicament. This House will recollect what our respected friend Acharya Kripalani said at the time we were considering the Report of the Select Committee, about the attitude adopted by one of his colleagues in this House and his companion in this world. He said that he was making bold to speak because his 'colleague' had gone abroad and when she returned she might ask for an account of the finances of the household, but also his conduct during her absence.

That shows, Sir, where we stand today. It is on account of this that you are prepared to brush aside the sentiments of the less forward Hindu women, who do not know how to dress themselves properly. It is the women who do not have recourse to gaudy and gorgeous *sarees*, women who do not know how to paint themselves—it is that section of the Hindu women whom you are trying to suppress in the way you are doing today.

An Hon. Member : Is all this in clause 2 ?

Shri R. K. Chaudhuri: I want to make it perfectly clear that I oppose all the amendments, including that of my hon. Friend Dr. Ambedkar, except the one which has been put forward by my hon. Friend Mr. Jaspal Roy Kapoor. I support that amendment because it practically tantamount to an opposition to the Hindu Code. I will explain how it is an opposition to the Hindu Code. It gives us the fullest discretion to make this Hindu Code a dead letter, because according to this amendment the Hindu Code will only govern those people who would come forward in the open and make a declaration and say that they want this Hindu Code to be applied to them.

Shri J. R. Kapoor : I am tempted to exclaim ' Save me from my supporters '!

Shri R. K. Chaudhuri: I may tell my hon. Friend Mr. Kapoor

that he may leave aside the *kambli* but the *kambli* would not leave him. To the end of this debate on the Hindu Code I shall follow him wherever he goes. If my hon. Friend Mr. Kapoor's amendment is carried, it practically means that we shall be in the position that we are today. This Hindu Code will be more or less a Special Hindu Marriage Code. It will be something like that. Even now a Hindu can marry within a prohibited degree if he makes a declaration as is required under the Civil Marriages Act. Similarly, if this Hindu Code would only govern those who would make a declaration that they want to be governed by it, I believe that two-thirds—not two-thirds but nearly cent per cent—of the Hindus would refuse to come forward and make declaration in the manner which has been suggested by my Friend Mr. Kapoor. That will mean practically that this Code will *be shelved* and the Hindu Law which governs us today will continue to govern us.

I was very much interested to hear about this Punjab Customary Laws Act. This Punjab Customary Laws Act, as was admitted by my hon. friend Pandit Thakur Das Bhargava who referred to it in this House, did not prohibit bigamy at all. What my hon. Friend Pandit Thakur Das Bhargava wants is that the Punjab should be absolutely left out of this Hindu Code, that this Hindu Code may be in force in the rest of India but not in the Punjab—which means that although bigamy may be an offence in India, it will not be an offence in the Punjab and my hon. friend may go on merrily as he likes. I do not understand this, and I hope my Hon. Friend Dr. Ambedkar will be able to explain the position to us. It is this. When custom has got the force of law and that custom becomes invariable, no legislation can really over-ride it. Ordinarily if you are going to prove a custom, the burden is on you to prove that the custom is invariable, that the custom is not immoral, and that the custom has been followed. But when that custom is embodied in a piece of legislation which has been in force for some time and when that custom has not been abrogated, has, been recognised. I do not understand how the application of the provisions of this Code can in any way interfere with that customary law unless it is stated clearly that all that law has been repealed by this Code. I may not have thoroughly studied the Hindu Code, but my impression is that no such provision has been made in this Code to repeal the Customary Law Act of the Punjab. And if that stands unrepealed you shall have inconsistent legislation in this country. Hindus in the whole of India will be governed by the

Hindu Code, but those in the province of Punjab, where customary laws have been codified and are in force, will remain unaffected by this Code. I will ask the hon. lady Members of this House whether they are prepared to allow Hindus of the Punjab to 'commit' bigamous marriages whether they are agreed at any rate that there shall be no divorce in the Punjab and that they would allow their sisters in the Punjab to be "persecuted"—it is their language, not mine. I say no woman can be persecuted. The days of persecution of the woman have gone. Nowadays it is the men who are being persecuted by the tyranny of women. If any hon. Member of this House had the temerity to express himself clearly, he would say something about the tyranny of modern women.

Therefore, I would ask this House to consider and pause carefully before it gives its assessment to this piece of legislation. Hon. Members of this House will remember that the Members of this House had no mandate to support such a sweeping legislation, a legislation having such far-reaching effects. Our election had taken place in an indirect way. I repeat what my hon. friend Mr. Naziruddin Ahmed said. It is not that we are not competent to pass this legislation. We are competent to pass any legislation today. We are competent to pass a legislation that the rule which is now obtaining—the salutary rule which has been accepted by the Government of India—that no married women should be taken in the Indian Foreign Service should be abrogated, and we can pass a legislation to say that none but women shall be taken therein. We are perfectly competent to do that. There is no question of incompetency here. Women can become constables and carry sticks; they can put on pyjamas and turbans; they can even wear beards! also as Members of the Constabulary. Why can we not pass a legislation like this? Nothing stands in the way of our doing this.

Mr. Deputy Speaker: How do all these arise under this?

Shri R. K. Chaudhuri: I was only giving an analogy. Then I come to the most important thing. As we had no opportunity of getting a mandate from our electorate and as we have been ignoring the majority opinion given or received as a result of circulation of this Bill, we must take very great care to consider how far this legislation will be accepted by us. I therefore agree with my hon. friend, Mr. Naziruddin Ahmad that the consent of the people is necessary for passing this legislation. Now, speaking about discrimination, a great deal was said yesterday about the discriminatory character of this piece of legislation and

about the way in which the Constitution has been ridden roughshod. Dr. Ambedkar, if I remember a right, himself referred to the question of breach of certain fundamental rights of the Constitution. He said if the present Hindu law is not amended, in the manner in which he seeks to amend this code, then a question may arise in the Supreme Court or in the High Court where it will be asked by the other parties that the Hindu law makes a discrimination between Sudras and non-Sudras. A Sudra of any age can be adopted. A Sudra can be adopted even though he may be related very closely and then a Brahmin of a similar position cannot be adopted. Therefore there is discrimination in the present Hindu law and therefore he said that unless the present Hindu Code is adopted the present Hindu law will always be subjected to criticism by a court of law on the ground that it is discriminatory.

Now, Sir I come to a more serious point. I suggest that the arguments which have been put forth by me hon. friends. Messrs. Jhunjhunwala and Naziruddin Ahmad should also be taken into serious consideration. I also want to draw the attention of the House to one particular point, namely the discriminatory character of this legislation which hurts the Constitution itself. My hon. friend Mr. Naziruddin Ahmad and I are behaving as if we are sailing in the same boat. He is isolated in one bench here and I am isolated in another. My hon. friend, Mr. Naziruddin Ahmad—God forbid—if he were to take another wife, if he wants to marry again during the life-time of his present spouse, then he will not be liable to conviction either under the Indian Penal Code or under the Hindu Code, whereas I being a Member of the same House, being a close neighbour of his, if I dared to follow his example and if I have in undergo another ceremony of marriage, what will be my fate? I shall be simply prosecuted, convicted, sentenced to imprisonment and probably manhandled when I am taken to prison by my own friends. There will be a great public feeling against you that I was spared in any way. Is this not discrimination? If that is not discrimination, I fail to understand the meaning of the word 'discrimination'. We are subjects of the same sovereign power., we are bound by the same Constitution ; we are living in the same realm and while the one enjoys the privilege of marrying as many as four times. I cannot dare to marry more than once. What is then the meaning of discrimination?

Shri Tyagi: Bad luck.

Shri Raj Bahadur : On a point of information, may I know how

many times has the hon. Member married already.

Shri R. K. Chaudhuri: That is a personal question. Examples are very contagious. My hon. friend Mr. Tyagi says that it was my bad luck that I have been put in such a discriminating position. Let us take it arithmetically; if after having married once, I am called 'unlucky' then what are you to call a gentleman who has not been able to marry so long. Yesterday my hon. friend Mr. Naziruddin Ahmad mentioned about a certain kind of help which some of my esteemed friends would give in the way of vote by quoting Hindu Shastras. He being a non-Hindu probably was feeling delicate and refrained from saying what he wanted to say. Let me make myself clear. I submit that the first premises on which those who want to support this Hindu Code is this: Hindu religion is intimately connected with Hindu law, that is to say the Hindu law is intimately connected with Hindu religion. Divorce of Hindu law from Hindu religion means nothing. Here this is a religious question. If the Hon. Minister in charge of the Home Ministry were to take out a census of those people who believe that not to have a son is to go to Hell, you will find that two thirds of the Hindus believe in that. They believe that if you do not have a son, you will go to hell.

Shri Tyagi: I want to know how can one help it if he has not got a son. What is he to do? It is not in his hands.

Shri R. K. Chaudhuri : You need not go into irrelevant questions. I would just like to tell my hon. friend that there is no limit of age so far as marriage is concerned. Dr. Ambedkar has been merciful in this respect. He has said do not marry more than once. You may divorce a dozen of your wives and there is no bar to your marrying again. **Shri Tyagi:** One by one.

Shri R. K. Chaudhuri : Only one at a time ; not more than one. That is what is stated here. He does not lay down any restrictions of age. A woman of 85 years under this new picture of the Hindu Code can marry a young man of 25. There is no civic sense in this Hindu Code.

Shri Deshbandhu Gupta (Delhi): What about *vice versa* ?

Shri R. K. Chaudhuri: *Vice versa* also. I submit that it is most inhuman for the author of this Hindu Code to suggest that you can, whatever your age, marry again if you are inclined to marry.

Shri Bharati L. Krishnaswami (Madras): What is the relevance of this to clause 2 ?

Shri Deputy Speaker: He says that the Hindu Code Bill ought

not to be applied to all persons except to those who voluntarily submit themselves to the Code. Therefore, he is developing that argument.

Shri R. K. Chaudhuri: Coming to the clause under discussion personally, I would prefer that the provision should remain unchanged, so far as professing the religion is concerned. My hon. friend Dr. Ambedkar and a few others have sought to amend the provision by saying that this Code shall apply to Hindus by religion. It is very difficult for anybody to prove that he is by religion a Hindu. What does the word ' religion ' indicate. The word ' religion ' is derived from *religion*, to bind. Can I say that I am a Hindu by religion ? I may say that I am born of Hindu parents, that I am a son of a Hindu and therefore I am a Hindu. It would be difficult to say that I am a Hindu by religion. The Hindu religion lays down a very high standard. Judged by those standards, it will be found that most of the people who call themselves Hindus are not really Hindus. I may profess myself to be a Hindu : I may like to be governed by the Hindu law or Hindu Code ; but I cannot call myself to be a Hindu by religion. I do not follow the principles of that religion at all. How can I say that I am a Hindu by religion? A Hindu is not expected to take meat. According to the Hindu religion, it is a forbidden thing. There may be many in this house, who may be calling themselves Hindus, but who would not be a Hindu according to those standards. Many who may call themselves Hindus may be doing un-Hindu acts. But, still, they would like to be governed by the Hindu Code. To say that this Code shall only apply to those who follow the principles of the Hindu religion would be a misnomer and is certainly opposed to all principles of honesty. I say that although I may not be a Hindu, although I may not be a follower of the Hindu religion, I profess Hinduism; I say ,that I am a Hindu. So long as I say that I am a Hindu, the Hindu Law or the Hindu Code may be applicable to me. So long as I do not renounce my religion, so long as I say that I am a Hindu, because I call myself a Hindu, I shall be governed by the Hindu Law. Or as my hon. friend Mr. Jaspat Roy Kapoor contemplates, so long as a man says that he will be governed by the Hindu Code, he shall be governed by the Hindu Code ; not otherwise. Therefore, I say, how can you lay down this condition that one must be a Hindu by religion ?

In our part of the country, that is in Assam, the tribal people have been held to be governed by the Hindu Law. They are not Hindus. They are not Hindus by religion. They do not follow the

principles laid down in Hinduism for marriage. They do not observe the same kind of the prohibitive degree of Hindu marriage. They do not follow the same rules of adoption. All the same they are governed by Hindu Law, because in some cases they have no other law, and in other cases they profess to be Hindus. Therefore, if it comes to a question between the phrases "professing the Hindu religion" and "Hindu by religion" I will prefer the former.

And now, let me come to another aspect of the matter. There is this question of converts, and Dr. Ambedkar has himself brought forward an amendment in this respect. But I maintain that so far as Hinduism is concerned, this word "convert" is not applicable. I can understand reconversion to Hinduism, though I do not know much about it, there is no conversion to Hinduism because Hinduism is not a proselytising religion. To speak of a convert to Hinduism is absolutely meaningless. There cannot be any conversion to Hinduism. Anyone living in Hinduism is a Hindu, unless he clearly says that he is not a Hindu, that he is a Muslim, or a Parsi, or a Christian or Jew. That has been the position from time immemorial. There cannot be a convert to Hinduism. Will Dr. Ambedkar kindly tell me what are the ceremonies to be performed for a conversion to Hinduism?

Dr. Ambedkar: *Prayaschitham.*

Shri R. K. Chaudhuri : Can anyone be converted into a Hindu? Did Dr. Annie Besant convert herself to Hinduism ? Can Dr. Ambedkar give any example of a conversion to Hinduism ?

Dr. Ambedkar: There are so many decided cases on the subject and if my friend will only refer to the first few pages of Mulla's Hindu Law he would get all the information that he wants.

Shri R. K. Chaudhuri : If Dr Ambedkar is referring to " Sudhi " that is a different thing. It relates to a Hindu who has left Hinduism and is again brought into the Hindu fold. But what is the procedure or the ceremony for converting any one into a Hindu ? If it is a case of conversion, I know the process. The person concerned must fast for a certain period.

Mr. Deputy Speaker : Is the hon. Member trying to fix the procedure for reconversions of Hindus, in this Code ?

Shri R. K. Chaudhuri: I am only saying that there can be reconversions into Hinduism, but there cannot be a conversion. Do not use the word "convert" here. Use some other word.

Mr. Deputy Speaker: Courts have decided that there can be a convert to Hinduism even though he did not belong to the Hindu

fold originally.

Shri R. K. Chaudhuri: There can be re-conversion, but what about conversion? The difference is only with respect to that.

Shri Venkataraman (Madras) :The Madras High Court in the case of Ratansi Morarji-vs-the Administrator General, has decided that any person can be converted to Hinduism.

Dr. Ambedkar : It related to an English woman and the question was whether a Christian could be converted into a Hindu and the answer was, yes.

Shri R. K. Chaudhuri: Will the Hon. Minister tell me the procedure or the ceremony for such a conversion ? It is never too late to learn, after all.

Mr. Deputy Speaker : The hon. Member himself is very particular that Hindu traditions etc. should be preserved. Where is the harm in getting as many Hindus as possible and as many people as possible under the Hindu Law ?

Shri R. K. Chaudhuri: I only want that the author of this Bill, Dr. Ambedkar and the founder of our Constitution should not indulge in words which have no meaning. The word " convert " has no meaning when applied to a Hindu.

Dr. Ambedkar : That is an old anti-quoted view of Mr. Chaudhuri.

Shri R. K. Chaudhuri: Can Dr. Ambedkar please refer me to one single original text of Hindu law where it is said that conversion to Hinduism is possible?

Dr. Ambedkar : I can refer the hon. Member to the case of Morarji-vs the Administrator General.

The Minister of State for Transport and Railways (Shri Santhanam): And there is a monument in Bhilsa which speaks of a Greek having been converted into a Hindu.

Dr. Tek Chand (Punjab): And many born Christians and Moslems have become Hindus. If my hon. friend wants he can bring any such persons now and they will be converted by Aryas to Hinduism and absorbed in Hindu Society. I have several books giving cases of conversions even during Moslem rule and he can have them and read them at his leisure.

Dr. Ambedkar: Oh do not do that, Mr. Chaudhuri never reads.

Shri R. K. Chaudhuri : I am afraid the hon. Member is confusing between conversion and re-conversion and also between conversion and initiation. Anyone can be initiated into Hinduism. I am not speaking about that.

Mr. Deputy Speaker : But he says there can be conversion also.

Shri R. K. Chaudhuri: Let us abandon that point now Sir.

Mr. Deputy Speaker : I thought the hon. Member has concluded ?

Shri R. K. Chaudhuri : Practically it is a conclusion for me, for I am going away to-morrow.

Mr. Deputy Speaker: Will a few more minutes do ?

Shri R. K. Chaudhuri: No. Sir, a few more minutes will not suffice.

Mr. Deputy Speaker: Then we may adjourn.

The House then adjourned till a Quarter to Eleven of the Clock on Wednesday the 7th February 1951.

HINDU CODE— *Contd.*

Mr. Speaker: The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Clause 2 is under discussion.

Shri Gautam (Uttar Pradesh) : Before proceeding further, I would request you, Sir, to clarify one point. I understand—1 was not present yesterday in the afternoon ; therefore I am raising this question—that one of the speakers used some language while discussing this clause which is objected to by some Members. Has the attention of the hon. Speaker been drawn to it ? I would request you, Sir, to issue certain instructions so far as these things are concerned so that Members may be within their bounds and may not hurt the feelings of other Members.

Shri M. A. Ayyangar (Madras) : May I say. Sir, what happened?

Mr. Speaker: He need not repeat those things.

Shri M. A. Ayyangar (Madras) : No; I am not going to repeat those statements at all, because that would defeat the very purpose. Yesterday, unfortunately, some remarks, I think, quite unwittingly, escaped the mouth of one of the hon. Members who was speaking. No doubt, he always speaks in good humour and nothing is taken exception to. Unfortunately, it descended to something, which was not desirable. As soon as it was pointed out to me, as I was in the Chair, I directed that that portion of the statement ought to be expunged from the records. I thought the matter was over. I think all are agreed, and the hon. Member also expressed regret for having made that statement quite unwittingly, that that chapter is closed. It does not form part of the record. I do not think there is any need to bring up the

matter again .to you for any particular action.

Mr. Speaker : I would only say that I trust that members will take sufficient note of this and so deliver their speeches and pass remarks that there may be no occasion again to repeat this kind of thing.

Shri Frank Anthony (Madhya Pradesh) : A bad example is set by the Treasury Benches.

Mr. Speaker: Let us now proceed further with the Bill.

Shri B. Das (Orissa) : Sir, I see the debate on clause 2 has descended to the level of a general debate on the whole Bill. I think today is the last date fixed by you for passing this Hindu Code.....

Several Hon. Members: No, no.

Mr. Speaker: Order, order. Does the hon. Member want to put any time-limit ?

Several Hon. Members: No no.

Shri B. Das: I want that on clause 2 there should be closure.....

Several Hon. Members: No no.

Mr. Speaker: Order, order, hon. Members need not say yes no. Let there be a motion for closure and if it is the general feeling that there has been sufficient discussion, I will accept closure. even if I accept it, the matter rests with the House ;they may accept or reject the closure motion. As regards the character of the debate though I do feel that we are going into very general remarks. I myself do not know how the discussion could be restricted, particularly in view of the nature of clause 2. Some communities are sought to be included; some are sought to be excluded. There are amendments on both sides. Therefore, a general survey to justify the inclusion or exclusion of the provisions becomes to some extent at least necessary. That is why I was feeling difficulty in restricting debate on that. However, I believe there are no points or explanations to be put. Let us proceed immediately with the consideration of the Bill.

Shri Syamnandan Sahaya (Bihar) : The debate has now on for full two days. If the speeches made in this House indicate of the reception that the Code is going to have in the country even an optimist and ardent supporter of the Code like Hon. Dr. Ambedkar should have no difficulty in arriving at the conclusion.

Shri B. K. P. Sinha (Bihar) : May I point out, Sir, that the supporters of the Bill have not spoken so far.

Shri Syamnandan Sahaya : It is no fault of the House, or of those who do not agree with this Code if the supporters of the Bill do not like to rise and support their cause. How are we to how

many of them in their own hearts support and outwardly propose to do so?

Shrimati Renuka Ray (West Bengal): Take the vote an.

Shri Raj Bahadur (Rajasthan) : If I understood correctly, S are at present calling those hon. Members who have moved amend

Mr. Speaker : Anybody, who wishes to support or oppose it is welcome to do so.

Shri Syamanandan Sahaya: Sir, this bill has been, in stages, before the country for, if I may say so, quite a long and opinions either in favour or against the Bill have been expressed both in the Press and on public platforms and even in this House-on many occasions. I have no doubt in my mind that if the opinions are scrutinised very well, they will disclose not merely an opposition to the provisions of the Code.....

Shri Sonavane (Bombay) : On A point of order. Sir. We are now dealing with clause 2 relating to " Application of the Code ". The discussion should be on scope of clause 2 and not a general discussion. Is the hon. Member allowed to have a general discussion on the Code as such ?

Shri Syamnandan Sahaya: May I, Sir, with your permission, say.....

Mr. Speaker : There is no point of order. I just explained a few minutes ago that when you are discussing the " Application of the Code ", when you want to include certain communities or exclude certain communities, it becomes perfectly competent and relevant to show how the various provisions adversely affect or benefit the communities. That is why I said it is very difficult to restrict the whole discussion at this stage to specifically certain portions of the Bill. For example, I believe, yesterday, Sardar Hukam Singh, went into the question of marriages and went into the question of succession. It could not be excluded as irrelevant discussion because it is sought to enact that this Bill should apply to Sikhs also. He is perfectly entitled to show how this Bill adversely affected the Sikhs in the matter of marriages or customs or succession. That is how the points are interconnected. Therefore, it will be better if such points are not raised over and over again.

Shri Sonavane: But, Sir..... Mr..

Speaker : Order, order.

Shri Syamnandan Sahaya: As I was saying, if the opinions so far expressed—they are quite voluminous—and are in the possession of the Hon. Law Member himself—are carefully scrutinised, they would not merely disclose the opposition to the

various provisions of this Code, but would also disclose an anguish, a feeling of anxiety, and a feeling of great concern, among the Hindu community over this Code. I know and I fully realise the sincerity of purpose of those who want to lead the community on a different channel. This is nothing new in history. Every reformer, perhaps, would not have been a reformer, if he had not thought that what he himself thought of religion was the right thing and that every other thing, as was said here by the Mover, was archaic. Therefore, although I may congratulate the Hon. Law Minister for evolving a new religion, which it is left to posterity to adopt or not to adopt, so far as present conditions are concerned, I must certainly warn him and Government that it would be a suicidal policy to make it an obligatory legislation.

The Minister of Law (Dr. Ambedkar): We are prepared to commit suicide.

Shri Syamnandan Sahaya : This reform can only be considered either as a social reform or a religious reform. If it is a social reform, I don't see why the Hon. The Law Minister entered a caveat yesterday when some hon. Member suggested that it should be made all pervading. In that connection he urged that we ought to have consideration and regard for the sentiments and feelings of non-Hindus in this country. I am really surprised that while he advocated that for the non-Hindus, he does not seem at present to have any regard for the feelings of Hindus in this matter. Speaker after speaker in this House, coming from different parts of the country, belonging to certain different sects or certain sections of the Hindu community, have explained how they feel about the application of the provisions of this Code to them. Therefore, while this reform may, in the opinion of some, be called for, and urgently called for, yet, I do submit that it will not be fair to make it an obligatory legislation. I have, therefore, great pleasure in according my support to the amendment of Shri Jaspat Roy Kapoor who suggests that it should be left open to members of the Hindu community, or for the matter of that of any other community, to accept this Code and register their will to be governed by it. If on the other hand it is held that it is some type of a religious legislation, then I think Dr. Ambedkar will concede that this is neither the appropriate time nor even proper for a secular State to attempt some kind of a religious legislation. I consider that this reform is of a social nature. And from time of which we have any record, we have known that these social reforms have to be of a permissive nature so that people may

be able to adopt them with pleasure. In civilised life, even conversion by force is not permissible, and I am sure Dr. Ambedkar will not make any attempt at forcible conversion to the religion, which he propagates now through this Hindu Code.

12 NOON

When the Minister of Law started his speech yesterday—he will pardon my saying so—I think he was a little nervous about his case, because normally he is not apt to go about hitting right and left. He has given this House the very good example of very sound arguments at all time, some of them most difficult, both here and in the Constituent Assembly. But yesterday, he started his speech hitting right and left and calling those who had moved amendments and made speeches in support of them as being absurd and if I remember right, as being foolish and....

M. B. Bhargava (Ajmer) : And devoid of common-sense.

Shri Syamnandan Sahaya: Yes, and devoid of common-sense. Well, though I did not like it, and though it hurt me, still as one who does not agree with him in getting this Hindu Code passed as it is, I felt a little happy that the author of the Bill was so nervous that he was not stable at all.

Shri J. R. Kapoor (Uttar Pradesh): When the case is poor, abuse the adversary.

Mr. Speaker: Order, order.

Shri syamnandan Sahaya : Now, if we scrutinise the provisions of the law carefully, we will find that there are really some tremendous difficulties which the mere passing of this Code is not likely to solve.

[MR. DEPUTY-SPEAKER IN THE CHAIR.]

After all, a social reform has to keep not merely the individual but the whole society in view. And if certain provisions of this Code are given effect to, without any consideration to the particular manner in which society has been running for a long time, it will end in breaking up society as it is today. Therefore, I submit that it is necessary that this code if passed at all, should *be* permissive so that people who would like to be governed by it may do so with their eyes wide open.

Let us also see, what was the original intention of those who decided to have a Hindu Code. I will refer you, Sir, and the House to an important recommendation of the Hindu Law Committee popularly called as Rau Committee. At page 13 of

their report in paragraph 50, they say:

“ Most of the provisions in the Code are of a permissive or enabling nature, and impose no sort of compulsion or obligation whatever on the orthodox. Their only effect is to give a growing body of Hindus, men and women, the liberty to live the lives which they wish to lead without in anyway affecting or infringing the similar liberty of those who prefer to adhere to the old ways ”.

This recommendation, I submit, is very clear and it was made after the committee had toured round the whole country and ascertained the views of the Hindu community. This recommendation must have been made in all seriousness and I submit there is no reason for us now to depart from this very important decision of the Committee, whose recommendations are the basis of the Code which we are considering today. I do not know whether the mass of evidence collected by this Committee has been carefully gone into and if it is so done. I have no doubt in my mind that the Government of India will come to a similar decision with regard to the applicability of this measure.

Some friends yesterday made a suggestion about taking a referendum on this very important issue. Here again we find the Hon. Law Minister wholly opposed to it and not only that but the climax was reached when he said that the electorate are ignorant and they are people who do not know anything about this matter.....

Shri Bharati (Madras): About the technicalities of the matter.

Shri Syamnandan Sahaya: You heard his speech and so did I. The records are here. It is not a question of technicality at all. Every member of the Hindu community in this country knows fully what he wants so far as his religious and social laws are concerned and there will be no difficulty, in my opinion, in taking a referendum on a question like this. When I recalled that he who was the main architect of the Constitution of India and he who was an ardent advocate of adult franchise should now speak so disparagingly about democratic methods, it was not only a surprise but a shock to me and I thought within myself whether what the Hon. Law Minister himself said yesterday about the leopard not changing spots was as true today as when it was said. We cannot forget that wherever or whenever democracy is inaugurated they do not start it with the entire electorate being as educated, as one would like them to be. Let us not forget that democracy is its own teacher and the more

you consult your electorate the more you give them the chance to express their opinion, the more conscious and the more educated you make them. I therefore submit for the consideration of the Law Minister that there cannot be a more appropriate method of consulting the electorate today than a referendum on the Hindu Code. After all whether the electorate today is politically conscious to that extent or not, it certainly will have to be admitted that so far as religious sentiments and feelings and religious laws are concerned they are fully conscious and if you ask any man in the streets of a town or village, he will be able to tell you what is good for him. I therefore submit that even now there is a chance and opportunity and the Law Minister will do well to consult the electorate on a matter like this.

An Hon. Member: He is his own electorate!

Shri Syamnandan Sahaya: But if he chooses not to do so as it appears, then I will submit to him to make the law a permissive legislation. If he makes the law an obligatory legislation—1 do not know for what he will take my warning worth—but let me tell him that he will fail in his attempt as did the Slave Kings of yore—the Lodis, the Tughlaks, the Khiljis, the Sayyids and the Moguls—who attempted in vain to eradicate the old religion and the old religious laws, which he called archaic yesterday. I have no doubt that his attempt at ending what he called archaic laws will fail in the same manner as did the attempts of others similarly placed in authority for thousands of years. There is something more than mere laws in the Hindu system of Social Codes. Its foundations have been much more deeply laid and could not be shaken by legislations passed in such haste without consulting the people affected.

When listening to the speech of the Hon. Law Minister I was reminded of a story which for a long time was published by the *Amrita Bazar Patrika* year after year on a particular day. The story was about an old Pandit and Pandits are proverbially poor. His wife pestered him from time to time about finance for running the household. The Pandit was able to fork out a rupee or two now and then to enable the household to be carried on. One fine morning he struck upon something very novel and told his wife, " You need not worry about funds any more. I have found out a device by which I can get a lakh of rupees." The wife asked him what was the device. He said " I have composed a few couplets last night and I shall go to the Raja tomorrow morning and place before him the couplets. I will tell him that if

he could find any Pandit in his *Durbar* who will be able to interpret the couplets then I would pay him a lakh of rupees. If, on the other hand, no one can interpret my couplets the Raja would have to pay me a lakh of rupees." The wife laughed and said " You must be a fool. Supposing some one interpreted the couplets, where are you going to get the one lakh from to pay to the Raja ? " The Pandit in his turn laughed and said " You ladies have no imagination. You people never had any since creation....."

An Hon. Member: Is it your opinion ?

Shri Syamnandan Sahaya: Not mine, it is the Pandit's opinion. I cannot speak so disparagingly of women. Continuing, the Pandit said " It is very simple." She asked what was it and the Pandit said, " I shall accept no interpretation. The Pandits will come and go and I shall accept nobody's interpretation. I will say that is not the interpretation and ultimately the Raja will have to fork out the one lakh of rupees." Even so whatever advice or suggestion or opinion we may express here., if the Hon. Law Minister is in the mood of the Pandit what can we do ? We have to appeal to him and tell him what is the opinion outside. I have no doubt that he will depend upon us for giving him such information as we are capable of gathering by going round our constituencies.....

Dr. Ambedkar: I have more information than you have.

Shri Syamnandan Sahaya: You may have more than what I personally have but I am talking of the Members of the House and I am not talking of myself only. I dare not say that I have more information than you have.....

An Hon. Member: What about the lakh of rupees ?

Shri Syamnandan Sahaya : The Pandit got the lakh of rupees all right.

Pandit Thakur Das Bhargava (Punjab) : Has the Hon. Minister not admitted before in this House that public opinion does not favour this Bill ?

Shri Syamnandan Sahaya: Has he ? I am very glad. That very strongly supports my case. If that is so, then there is no ground for the Hon. Minister to come to this House at all with this Code. In any case the difficulty arises when you come into power : then, naturally apart from power, one has also the feeling that one has the knowledge, the information, which no one else possesses. Mr. Gladstone was once rebuked by Queen Victoria by remarking, " You must know, Mr. Prime Minister, that I am the Queen, the Sovereign of England " And

Gladstone hit back by saying. " Yes, Your Majesty, but I am the people of England ". So, you Mr. Law Minister may be today the Sovereign of India., we are the People of India, and if you don't listen to us you will go the way the sovereigns have gone. Whether you like it or you don't, this is what will happen.

This matter of the Hindu Code, in my opinion, should not be taken— pardon my saying so—as it is being taken. Religious reforms and social reforms are certainly necessary. No one could possibly get up in this House and say, " No, we shall stay where we are ". What are we then asking you to do ? We are only asking that the legislation be made permissive. Let the people know all about it. Let them think over the matter and having considered the whole matter if they think it is for the betterment of the country, for the betterment of the society, they will accept it. But do not for God's sake make it obligatory.

Shri R. Velayudhan (Travancore-Cochin): Then what is the meaning of a legislation ? Why have it ?

Shri Syamnandan Sahaya : I will explain to you presently what is the meaning of legislation. You are perhaps fresh to a legislature. Otherwise you would not have asked that question. Anyway I will reply to you in a few minutes.

Shri R. Velayudhan: I have read the Hindu Code.

Shri Syamnandan Sahaya: You have read the Hindu Code. That is good enough. Then you will go to heaven straight.

If you look at the legislation and the different parts of it, you will find that on various details certain exceptions have been made in the Code itself. Now, the Code excludes in certain respects the two communities following *Marumakkattayam* and *Aliyasantana* laws. And yesterday the Hon. Law Minister said that he was omitting sub-clause (4) to allow some type of married men to be governed by the Succession Act, that is those who were married under the Special Marriages Act.

Mr. Deputy Speaker: He said it was more liberal.

Shri Syamnandan Sahaya: Well, if it is more liberal for them I do not see why the more liberal law should not be good for everybody. He is codifying the Hindu Law—not laying down any new but bringing up-to-date in certain respects the existing laws and bringing in some reforms. If you want you can be more liberal—who prevents you? But after all, if you claim that one of the main purposes of this Act in the first place is to codify the Hindu Law, keeping in view the different rulings and different interpretations and making the best use of them and also introducing progressive reforms—if that is so then I don't see

why you should have one set of succession laws for one class of married Hindus and another set for another class. If you want to do it, do it. There is no use saying that such of our friends here who advocate the passing of a Civil Code do not really want it. Pardon me for saying so, but let me assure the Hon. Law Minister that it is not so. The feeling is that if you want to put the whole country on a certain basis even if it meant some sacrifice, do so and we will gladly accept it. But you pick and choose and single out one community who perhaps would not be prepared to fight with you on that issue. If you pick out that community and do what you like with it, and the rest say, " Don't touch our religious susceptibilities ", then that is where the real difficulty arises.

Then the Code already excludes customary laws which will operate in spite of the Hindu Code. Exclusion has also been permitted for those who were governed by separate customs although they may be belonging to the Hindu community : so that it will be found that these differences and these exclusions, these permissions to be able to be governed by another law are already found to the Code. I therefore submit that it is not really asking too much of the Hon. Law Minister and of this House to make this Code a permissive legislation.

There are other difficulties also which I would like to mention for the kind and sympathetic consideration of the Hon. Law Minister. For instance, it is laid down that all divorces henceforth will have to be registered. When I read this—not only this but other paragraphs and other sections of the Code—I felt like exclaiming that the Code was really a heaven for lawyers, and that if anyone was going to profit or benefit by this it would be the past colleagues in law courts of the Hon. Minister. You may pass this Code tomorrow. Supposing we all agree that we shall not discuss this legislation any more and we pass it tomorrow, even if we do so do we really and seriously think that the people living in the villages, whom the Hon. Law Minister refuses to consult by a referendum because they are ignorant, will from day after tomorrow start registering all their divorces and all their marriages?

Dr. Ambedkar: There is no provision for registering divorces.

Shri Syamnandan Sahaya : I am sorry if I take time but before the House rises I shall read out to the Hon. Minister this provision. I have already tabled an amendment on that clause.

Shri Bharati: Registration for marriages only. There is no registration for divorces. You make a mistake.

Mr. Deputy-Speaker: The hon. Member evidently means that there can be under the Code no divorce except by a decree of court.

Shri Syamnandan Sahaya: Yes. The hon. Member has again drawn a distinction between tweedledum and tweedledee though it was not expected that he of all persons would take recourse to these. Well, if it is not registration and if it is only through law courts, then it strengthens my argument all the more. Is it possible to imagine, when we have a vast majority of people—thirty-three crores—many of them living in rural areas, not knowing anything about procedural laws and rules, is it possible to imagine each of them going to court for marriage and divorce ? I had thought it was only registration where the lawyers would get very little fee. But if it is the law courts then I have no doubt, and the house and the Hon. Law Minister will agree with me, that it is a heaven for the lawyers. In this vast country at least for some time to come—I should say for a long time to come, but certainly for some time to come—there is no justification for such an obligatory legislation to be passed. Give them the chance—if they think it is necessary then let them adopt it.

We have said a lot and the Code also claims for itself a very great and progressive position when you say we are giving this and we are giving that to the women of our country. I suppose that up to a certain point there is something to be said about it. But if we study the social conditions today among the Hindus, shall we not agree that these ladies in their households are almost each of them an Alexander unto herself ? You want to reduce that position of being the monarch of all they survey to that of a mere partner and you know what respect partners evoke, particularly when you are doing away with the joint family system. In a joint family system, the partners had a certain respect and position. There was inter-dependence and therefore one partner cared for the other partner. But having done away with the joint family system, you want to reduce the women to the position of a partner. If you are a partner, you have your set rights and your set quota. Today, the women are the masters of the whole household.

Dr. Ambedkar: Yes, very much.

Shri Syamnandan Sahaya: Tomorrow, you will make them partners.

An Hon. Member: Partners in what ?

Shri Syamnandan Sahaya: Partners in property.

An Hon. Member: Not in life ?

Shri Syamnandan Sahaya: I meant partners in property. After all, she gets something from her father's house. She is the owner of that. She feels she has got something by herself. Why should you not make her depend upon the newly acquired house of her husband ? You know, after all, properties create difficulties. I know of families, not one but many, where the power of attorney by the wife is not held by the husband but by some other person.

Dr. Ambedkar: There may be very good reason for it.

Shri Syamnandan Sahaya: That is what your Code will reduce the Hindu community to . If some people like it, then of course I have no objection to their adopting it.

Shri Raj Bahadur: Hence the necessity for divorce.

Shri Syamnandan Sahaya: I know young people like you are very anxious to have divorce laws, but there are other people who have to think of your welfare.

So, these are the difficulties about this legislation and before I resume my seat I would strongly urge upon this House and the Hon. the Law Minister to accept the amendment of making this legislation permissive. Otherwise, I am afraid it will not be taken so lightly by Hindus as Government link. It is going to create a great furore in the country.

Dr. Ambedkar: No.

Shri Himatsingka (West Bengal): Dr. Ambedkar is not afraid.

Dr. Ambedkar: I don't think so at all.

Shri Syamnandan Sahaya : I have no doubt in my mind that the Hon. the Law Minister is not afraid. He need not be afraid either. I had attempted not to say this, but I am doing so now. When I was last in my constituency, some people came to me and said, " You have not been a Congressman before " I said, " Yes, I have not been a Congressman before." They said, " You also dine with Muslims and are not orthodox and you are not a very devout Hindu." I said, " Yes. I am not a very orthodox Hindu in that sense." And then they said, " Is it therefore that this Hindu Code has been invented which has the effect of a bullet that kills two birds at the same lime, namely, the Hindu community and the Congress ? If the Congress Government is not circumspect and responsive to public opinion even after this, let them go the way they like. The country and the people will decide what to do with them."

Shri Alagesan (Madras) : Unfortunately yesterday the House was plunged into a mood which detracted very much from the

seriousness of the measure that is before us. I am glad that we have now regained the proper mood and consider it more seriously than before. Yesterday, the Hon. the Law Minister put up a very vigorous plea for the acceptance of the Code and his amendments. He is always a superb advocate. Apart from the content of his speech, the tone and the manner of it brought even those who oppose him very near getting convinced.

Shri Venkataraman (Madras): But you were not.

Shri C. Subramaniam (Madras) : That is why he said " very near " .

Shri Alagesan: I would like to be completely convinced, but I am sorry to say that I am not convinced. I would still urge the Hon. the Law Minister to bring forward a common civil code, though he derided the idea and even went to the length of attributing motives to those who wanted such a thing. For instance, he asked: " How is it possible that those who oppose the Hindu Code tooth and nail would accept a common civil code ?" He questioned their motives. But I would respectfully ask him. " Why is it that they object to this Hindu Code ?" Is it not due to the fact—partly at least—that it does not apply to the entire nation ? It applies only to one community, however large a section it may be. Thus, this Code is only a sectional measure and it is not a common measure for all. Is not the opposition to it, at least partly, due to this fact it does not embrace the entire nation and the entire community ?

Again, he said that he would produce legislation tomorrow, as if anybody doubted his capacity to produce legislative texts. He threatened to bring the text of a common and universal code tomorrow and confront the House with considering it. But that is not the main thing about it. If he proposes to confront this House with a common civil code, then it has to be considered in all its aspects and bearings by one and all and he will be the first person to come forward with amendments to that code. He said yesterday that no legal ingenuity can improve upon the Indian Succession Act, but I am sure, the artist that he is, he will go on amending even the best piece of legislation. Even for this Hindu Code, we find that his amendments are larger in number than the amendments proposed by any other Member. He can amend, and amend because others want it and desire it.

Again, he went on to expatiate on the sovereign and supreme nature of this Parliament. Nobody ever questioned it, but the sovereignty and the supreme nature of this House need not have been affirmed at the cost of an insult to the master of this

House. That was the unfortunate part of it. Though we are a sovereign body, we are subject to the people's will and our sanction is the people's will.

Babu Ramnarayan Singh (Bihar): Hear, hear.

Dr. Ambedkar : Why don't you live in the village rather than live here ? You will be a better master there than you are here.

Shri Alagesan : I wish to put a counter question to the Hon. the Law Minister. He said that those who oppose the Hindu Code cannot agree to a common civil code. It is impossible, he said, because he knew those persons very well. Everybody knows that the new elections will be held all over the country for this Parliament as well as for the legislatures of the various States within a year's time. It is not necessary that because this House is sovereign and supreme it should take upon itself the task of legislating on each and every subject. It may postpone some legislation: it may leave, with profit, some legislation to the House that will be elected within a very short time, and I do not doubt that the Hon. the Law Minister will concede that the new House that is going to be elected will have more time and will certainly be better placed and will certainly reflect the latest opinion and mood and temper of the people than this House can ever do. Will he not concede that such a House will be better placed to enact this piece of legislation than this house is ? And if he does not choose to do it, if he does not choose to leave the matter in the hands of the House that is to come, is it due to the fact that he is afraid that this measure will not be passed by that House? Shall I attribute such a motive to him, though I would not like to do it? (*An Hon. Member* : You have done it.) Why then does he fight shy of placing this all-comprehensive codification of Hindu law, before the new Parliament of this country ? I think he should satisfactorily answer this question.

But the chief complaint against the present Government, if one can say so, is this. After we have succeeded in our revolution, we have failed more in the psychological sphere than in other spheres. We have failed to enthuse the people: we have failed to strike that emotional chord in the people which alone binds them to us. Everybody is worried on this account. Why? It is good that we consider this question and examine it a little more carefully. In my opinion, we have decided largely on a policy of carry-over. We simply carry on the old traditions and we have not done anything to show a striking change which appeals to the people. This Hindu Code is an instance in point. It has been conceived under quite different circumstances, when we were

under the impression that everything that is Hindu is wrong and cannot be correct. We wanted to reform, we wanted to change, but not with a proper appreciation, in my opinion. We are simply carrying that over. We are trying to model the Hindu Code as a code that will apply to the Hindu community, though it is a very great community in this country, and not to all. It is because we have failed to introduce any innovation that we are in this mess. We have got everything that goes to make an emotional appeal to the people and yet we have strikingly failed in that field. That is something like a play with all the ace actors and yet the play fails to impress the audience. Our performance I shall liken to that.

What is the reaction that we have produced in the country by bringing forward this measure ? Supposing we had brought forward a common measure that would have applied to one and all. Then there would have been an electrical change in the atmosphere in the country ; there would have been an atmosphere of realism with regard to this measure. We would have been able to consider this measure more realistically than we are at present doing. And that we have failed to do. If we had done that we would have convinced the entire country that we are taking cudgels against and demolishing all differences based on caste and religion in the true spirit of our secular democracy. We would have incidentally translated our ideal of secular democracy into action and would have convinced everybody. Now there is not even a ripple on the surface except the placid placard holders outside this House and the imposing police cordon ; and perhaps occasional crowds in the galleries in multi-hued *saris*. We have not succeeded in producing any greater effect than this. But, I am sure that if the Hon. the Law Minister were to come forward with a common code that will embrace all communities, then the whole country will take interest in it and try to be more realistic about it. I may also venture to say that the reaction outside our country would also be much better, because at present we are held up to ridicule in the outside world by interested parties that we are a nation wedded to caste with the result that our prestige suffers. A common code would have done everything to dispel such a misunderstanding.

Again, there have already been instance where the Hindu law embraced other communities. I am told the Moplahs of Malabar, the Kutch Momins and the Khoja community, the followers of the Aga Khan, were all following the Hindu law and were

governed by the Hindu law up till the year 1937 when the Shariat Act was passed. I am told that even the author of Pakistan was governed by the Hindu law. When such is the case why should you fight shy of bringing forward a common code which will embrace all Hindus, Muslims, Christians and so on ?

Yesterday, the Hon. the Law Minister was very pleased with the speech of my friend Pandit Thakur Das Bhargava. He was all praise for the Code. He showered encomium on the Hon. the Law Minister for having thought fit to bring forward this measure. But, he made one very important reservation. He said all this only on the condition that it should not apply to the Punjab. He made an observation that those who have moved amendments are trying to rope in the other communities, the non-Hindus in this Act, and he asked whether the non-Hindus in this House are prepared to come under this measure. He went on to answer the question himself in the negative. But, I have consulted some of the non-Hindu Members of this House and they are quite willing to have a common code.

Dr. Ambedkar : Non- Hindus ?

Shri Alagesan: Yes, non-Hindus.

Shri Bharati: May I have the names of those Members ?

Shri Alagesan: The hon. Member may have it later from me ? As it is, we are doing a great injustice to the non-Hindu Members of this House. They are unable to take any interest in this discussion.

Dr. Ambedkar: Why, Mr. Nazruddin Ahmad has.

Shri Alagesan: He only reflects the opinion of his clients. The other non-Hindu Members of this House simply sit back and relax. They are not able to take any lively interest in the discussion, if they support it they are afraid of wounding the susceptibilities of the orthodox section of the Hindus : if they oppose it they are afraid of still more terrible elements. So they are playing a passive role.

Prof. Ranga (Madras): They support the Bill.

Shri Alagesan: That is doubtful. It is, therefore, necessary that we should make this measure more representative. Because, there will be nothing objectionable in it. If monogamy is good for a Hindu it ought to be equally good for a Muslim.

Shri Syamnandan Sahaya: Better for him.

Shri Alagesan : The present day Indian Muslim would not, I think, oppose it on religious grounds, because when Muslims

were permitted to marry up to four wives perhaps it might have been on account of the expanding phase of the Arab Empire. They wanted to expand and conserve, and so they were permitted to marry up to four wives, perhaps. But now we are faced with an entirely different situation in this country. Though our Prime Minister likes and loves to play with children and forget many of his worries, he is not prepared to greet their first arrival in this country. He has said so openly, and the prospect of more and more children certainly frightens him as well as it frightens everyone. It is a patent fact. I have no doubt our Muslim friends will realise it and try to fall in line, whatever their present religious law or practice may be. So it is not as if there are insurmountable barriers in the way of evolving a common civil code for this country.

I would like to quote the example of China. It is as ancient as our country. Apart from the ancient texts, they have recently evolved a civil law which embraces and tries to enact the three principles of the people enunciated by Dr. Sun Yat Sen. These principles, as the House knows, are nationalism, democracy and popular economic progress. We can very well follow the example of China, as we are placed in a similar situation, and try to put in our principles, the principles that the Father of the Nation placed before the country, and make them a reality. Nothing would have pleased him better than the bringing within the ambit of one civil code all the great religions that inhabit this country.

My hon. friend Pandit Thakur Das Bhargava waxed eloquent and welcomed most of the things that are found in the Code because he was sure that they would not apply to him. He welcomed all the salient features of the Code because he was sure that they would form the basis for the future civil code of this country, and he felt that this was a right step in that direction. But I am afraid I am unable to accept his plea. I am afraid it only side-tracks and postpones the question of evolving a civil code. Now that we have done our best by the Hindu community we would not bother about a common civil code, because the impression generally is—and I think there is good ground for it—that we are prepared to meddle with everything that is Hindu but we are fighting shy when it concerns others.]

Prof. Ranga; One by one.

Shri Alagesan : I only wish that the prophesy of the professor will come true, that you will approach others also and try to reform them also. But as it is, the impression is gaining

ground—and that is the ruling impression—that we are prepared here to go only to the Hindu community and none else. And that in my opinion is the chief psychological barrier to the passing of this measure. I hope the Hon. Law Minister with all his ingenuity will devise something which will dispel this misapprehension and try to convince not only the members of this House but also the people outside and then launch upon his offensive.

Shri Biswanath Das (Orissa): Sir, I thank you very much for having given me a chance to have my say in the course of discussions over the Hindu Code Bill. I was really trying to play the role of a backbencher in regard to the discussions on this Bill. But certain views expressed by the Hon. Minister of Law have goaded me to speak and record my protest.

In the course of his speech—need I say very lucid and analytical speech—he used certain choice expressions which are not only unwarranted but uncalled for. He has declined the demand for a referendum. I am not very much in favour of a referendum. I am not very much in favour of a referendum after all that has taken place. But to call it 'absurd' is as absurd as the absurdity itself. You are going to legislate on very important matters, namely, questions relating to marriage, divorce, adoption, joint family, women's property, succession, maintenance and the rest. The Hon. the Law Minister himself has recognised and admitted that the system of Hindu Law involves not only the legal frames of the society but also of our religious precepts would it be fair for him to take up the legislation of such important questions which concern the society, the life and living of crores of people of this country, without consulting the people themselves? In the course of his speech he stated that he does not know of any country where a plebiscite is taken for legislation. Even in ordinary matters, such as nationalisation and the rest, important political parties have refused to undertake such responsibility in a democracy. They dissolve Parliament and go and take the mandate of the country on such important issues. I would ask the Hon. Minister whether the principles involved in the Bill are less important than those in England and elsewhere where Parliaments have been dissolved and a mandate of the people has been demanded and taken. Does it come well from him to say that these are not matters on which a popular mandate is necessary. Let me not think of a plebiscite or even a dissolution of Parliament or anything of the nature demanded by some of my friends though those are relevant, logical and constitutional. We are an indirectly elected

Legislature. Parliament has to carry on business till the House is duly constituted. It is more or less in the nature of a caretaker Parliament I do not dispute the technical right of this House to pass any legislation. But constitutionally, it looks to me odd to say that on such an important legislation as this, we are to be refused to take the mandate of the people. Is it because he is well impressed of the fact that the people on consultation would not allow him to go on with the legislation? Otherwise, where is the need on his insistence not to put off legislation, which is hanging fire so long and also to insist upon one question, namely, that it shall be passed only in this House. I ask why in this House? What sin has this Parliament committed? Is it because it is an indirectly elected legislature? I would tell him that he is as good a representative as myself. I am elected by the Provincial legislature of the State of Orissa and he is elected by the State Legislature of Bombay. I have a right to ask the Hon. Minister whether he has consulted his electorate and whether he has got the mandate of his electorate in this regard.

Dr. Ambedkar: I do not want a mandate.

Shri Biswanath Das: You do not want a mandate. That is the sort of responsibility you owe to your constituency and that is the sort of constitutional notion that you want to inculcate into the people of our country. I will only refer my hon. friend to the Preamble of the Constitution which this House has enacted and to which my hon. friend, the Minister of Law has made a very notable contribution. The Preamble of the Constitution says : "..... to constitute India into a Sovereign Democratic Republic and to secure to all its citizens: Justice, social, economic and political ;"I want to ask him whether this is his sense of democracy to say " I refuse to consult the illiterate masses who have sent me here, who have given me the chance of representing the Province and which has given me the chance of assuming the reins of office as a Minister." Sir, all this is under the Constitution. We assure all its citizens social, economic and above all political justice. I would join issue with my hon. friend if he says that he has not assured political justice to the people of the country, because he refuses to consult them, the very electorate that have sent him here.

Dr. Ambedkar: Next time they won't elect me.

Shri Biswanath Das : It does not matter. You can stand by yourself. You do not need their vote and that is the reason why you find it an easy safety-valve.

Dr. Ambedkar : I care more for the Code than for my election.

Shri Biswanath Das : I am not thinking of my election. I am thinking of my responsibility as an elected Member of this Parliament.

Dr. Ambedkar: It is one o'clock. Have you concluded?

Shri Biswanath Das: I will continue in the afternoon.

The House then adjourned for Lunch till Half Past Two of the Clock.

[Contunied...](#)